

PART IX - RESPONSES TO COMMENTS ON:
THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

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DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)

This part contains responses to all comments on the Draft Environmental Impact Statement (DEIS) received either in writing or at the federal public hearings during the official review period (June 11, 1982 through July 26, 1982). The State and Federal responses to these comments have been coordinated between the New York State Coastal Management Program and the Federal Office of Coastal Zone Management.

No attempt has been made to distinguish between comments made on the DEIS and those made on the Coastal Program, primarily because of the combined format of the document and the interrelated nature of most comments received.

Some comments have resulted in specific changes to the text of the DEIS. Those changes have been made to the appropriate pages of the DEIS. Likewise, the revisions have been noted in response to the various comments and are reflected in the Final Environmental Impact Statement.

Written comments were received from thirty government agencies and individuals. In addition, seventeen individuals or agency representatives testified at three public hearings on the DEIS.

This section is divided into three sections:

- I. Responses to Federal Agency Comments on the DEIS
- II. Responses to State and Local Written Comments on the DEIS
- III. Responses to Testimony Received at Joint Federal and State Public Hearings on the DEIS

Page references in all comments are to the DEIS. Page references in all the responses are to the FEIS, unless otherwise noted.

Within the sections, individual commentators are indicated by capital letters. An index of commentators is provided on the following page.

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- B. U.S. Department of Defense, Army Corps of Engineers
- C. U.S. Environmental Protection Agency, Region II
- D. Federal Energy Regulatory Commission
- E. U.S. Department of Housing and Urban Development
- F. U.S. Department of Interior
- G. Nuclear Regulatory Commission, State Relations Section
- H. U.S. Department of Transportation, Office of Economics, U.S. Coast Guard
- I. U.S. Department of Transportation, Federal Aviation Administration

SECTION II: Responses to State and Federal Written Comments on the DEIS

- A. William C. Hennessy, Commissioner, N.Y.S. Department of Transportation
- B. Mary P. Bass, N.Y.S. Metropolitan Transportation Authority
- C. Anthony Tozzoli, Director, Port Department, The Port Authority of New York and New Jersey
- D. Robert D. Vessels, Director, Office of Environmental Planning, N.Y.S. Department of Public Service
- E. Louis M. Concra, Jr., Director, Division of Regulatory Affairs, N.Y.S. Department of Environmental Conservation
- F. Joseph P. Fraioli, Village Manager, Mamaroneck
- G. Edith A. Mesick, Planning Director, Columbia County Planning Department
- H. Frances F. Dunwell, Scenic Hudson, Inc.
- I. Samuel H. Sage, Executive Director, Sierra Club - Atlantic Chapter
- J. Sarah L. Johnston, Hudson River Sloop Clearwater, Inc.
- K. Bryan Luftglass, Sierra Club, Westchester-Putnam Group
- L. William E. Miller, United Mobile Sportsfishermen, Inc.
- M. Bernard J. Blum, Friends of Rockaway, Inc.
- N. Frank R. Seddio, District Manager, Community Board No. 18, Brooklyn, New York
- O. Nancy Nagel Kelly, Planner, Group for the South Fork, Inc.
- P. Howard Golden, President of the Borough of Brooklyn, New York
- Q. Hilda Regier, Rose Mary Lynch, Community Board No. 4, New York, New York
- R. John W. Meunzeinger, Westchester County Department of Planning
- S. Thomas La Manna, Community Board No. 1., Staten Island, New York
- T. Daniel J. Palm, Executive Director, St. Lawrence-Eastern Ontario Commission
- U. Bonnie June Mellon

SECTION III: Responses to Testimony Received at Joint Federal and State
Public Hearings on DEIS

- *A. Charlene Caile, representing County Executive Edward J. Rutkowski, Erie County
- *B. David Stebbins, Division of Planning, Buffalo
- *C. Frances F. Dunwell, New York Coastal Coalition
- D. Bernard Melewski, N.Y.S. Environmental Planning Lobby
- E. Frances Hodson, Long Beach
- *F. Aurora Gareiss, Udalls Cove Preservation Committee, Citizens Advisory Committee, Governing Board on Water Resources
- *G. Mark Wainstock, Neighborhood Organizations and Citizens Outraged Against Lignite (NO COAL)
- *H. Sister Frances Gerard Kress, CSJ, Environmental Protection Committee of Community Board No. 1, Brooklyn, and Greenport Civic Council
- *I. Virginia M. Dent, N.Y.S. Northeastern Queens Nature and Historical Preserve Commission
- J. Bea Green, New York, New York
- *K. Sarah Chasis, Natural Resources Defense Council
- *L. Joseph Landau, representing Howard Golden, Brooklyn Borough President
- *M. Marilyn Vogel, N.Y.C. Advisory Committee on Water Resources
- *N. Thornton Willett, Kane Street Block Association
- O. Agnes Hentschel, Woodside, New York
- P. Robert Alpern, N.Y.C. Citizens Advisory Committee on Water Resources
- *Q. Maurice Hinchey, Member of New York State Assembly, Chairman of Assembly Environmental Conservation Committee

* Written comments received

SECTION 1

RESPONSES TO FEDERAL AGENCY COMMENTS ON DEIS

A. Department of Agriculture
Peter Myers
Soil Conservation Service

- 1 COMMENT: We are pleased to note the attention given to the protection of agriculture. Your policy is consistent with USDA land use policy and with the Farmland Protection Policy Act, PL 97-98. USDA will provide all possible assistance in administering the NY CZMP.

RESPONSE: Thank you.

2. COMMENT: On page 248 change "one or more parts" to "two or more parts".

RESPONSE: See correction.

3. COMMENT: On page 248 the listing a through c would be strengthened by adding "residential uses other than farm dwellings".

RESPONSE: The guidelines have been revised to include the above.

B. Department of Defense
Colonel Robert K. Turner
Army Corps of Engineers

- 1 COMMENT: On page 75, under "Coastal Issues", the statement that "...adequate economic and environmental information exists to demonstrate the unjustifiability of any season extension..." is not supported by the facts. The statement is apparently the opinion of some of the State of New York officials. A complete discussion of the winter navigation/season extension proposals, including the findings and recommendations of the Corps of Engineers, should be presented.

RESPONSE: The State has changed its wording to indicate there is inadequate information at this time to demonstrate the justification of any season extension. No projects are specifically prohibited in this coastal program, all proposals will be evaluated for consistency with the 44 policies. The State will consider information by the Corps in making their decisions.

2. COMMENT: On page 131, Policy 3.A.2 implies that development of the major ports will be limited to improving "established" alignments and "existing" channels. There may be a need in the future to establish new alignments and new channels to improve the major ports. This future need should be recognized, and the document revised accordingly.

RESPONSE: See revision

3. COMMENT: On page 149, Policy 7 provides that the New York State Fish and Wildlife Habitat Rating Guide dated January 1981 will be the standard for determining habitat significance. a) The procedures for identifying significant habitats should be clearly defined. The proposed designation of significant habitats should be coordinated by the State with the Federal public agencies, such as the U.S. Army Corps of Engineers, the St. Lawrence Seaway Development Corporation, and others. b) Key information from the 1981 habitat rating guide should be included in the Coastal Management Program to enable Federal agencies to review the impact of the application of the rating guide on their own activities. Pertinent information that should be included in the program document should focus on how procedures were established for rating, how significance is determined for each of the five parameters used, a definition of "significance", and those Federal and public agencies with which the rating system report was coordinated before finalizing.

RESPONSE: Additional information more clearly defining the procedures used for identifying significant fish and wild life habitats has been added to Explanation of Policy #7. See revisions.

The process of applying the rating system and formally designating significant habitats will occur during the first year of program implementation. Prior to formal designation, maps, a copy of the habitat rating form and narratives, if any, will be provided to Federal and State agencies and the public for review and comment.

4. COMMENT: On pages 337 and 338, the paragraph on Consistency Procedures for Federally Conducted or Supported Activities should be revised to consider the requirement "If a Federal agency determines that a Federally conducted or supported activity does not directly affect the State coastal area, and thus a consistency determination is not needed, the agency should notify the Department of State at least 90 days before final approval of the activity, setting forth the reasons for its negative determinations" is a duplication and should be deleted. As provided elsewhere in the paragraph, for activities listed in Table 2, the Federal agencies will make a consistency determination and report findings through existing mechanisms, such as OMB Circular A-95 and NEPA documents. If it is determined that the activity does not directly affect the State's coastal area, it will be supported in these documents. Also, subparagraph 2 on page 337 provides that activities not listed in Table 2 will be monitored through the A-95 review process and other relevant processes by the State, and that the Department of State will notify the Federal agencies if a consistency determination and review is needed.

RESPONSE: Agreed. The paragraph is deleted.

5. COMMENT: The following provision should be added at the end of the next to last subparagraph on page 338 : "The Federal agency may presume State agency agreement if the State agency fails to provide a response within 45 days from receipt of the Federal agency notification."

RESPONSE: Agreed. See revision.

6. COMMENT: On Page 347, it is incorrect to list the Corps of Engineers programs in Part III of Table 2 under the "Federal Assistance" program; the Corps is not a granting agency. The Corps programs are appropriately listed in Part I of Table 2 as "Direct Federal Activities and Development Projects".

RESPONSE: See revision.

C Environmental Protection Agency
Anne Norton Miller
Region II, New York, New York

COMMENT: It is important that the State Environmental Quality Review Act (SEQRA) process be amended prior to issuing the final CMP EIS to ensure that local and private actions are consistent with the New York State Department of State (NYSDOS) coastal policies through the SEQRA process.

RESPONSE: Proposed amendments to the SEQRA regulations were contained in Appendix A of the DEIS. These amendments, as well as proposed DOS regulations to implement the Waterfront Revitalization and Coastal Resources Act (WRCRA) must be adopted prior to Federal approval of the NYCMP. A statement to this effect was included on page 54 of the DEIS and is in the FEIS, page II-4-12.

2. COMMENT: ...we recommend that a mechanism be established (a) to resolve possible conflicts between agencies, (b) to ensure compliance with the intent of CMP, (c) to coordinate existing programs and (d) to advocate specific desired activities.

RESPONSE: Section 919.1 of the WRCRA requires actions directly undertaken within the coastal area by State agencies to be consistent with the coastal policies. The NYCMP will rely on third party enforcement of Section 919.1 of the WRCRA. A third party may seek judicial review of a State agency's determination of consistency pursuant to Article 78 of the NY Civil Practice Law. This technique meets the requirement established by 15 CFR Section 923.43 which states, in part, "It will be sufficient if any of the following can act to ensure compliance: The State agency designated pursuant to subsection 306(c)(5) of the Act, the State's Attorney General, another State agency, a local government or a citizen."

Section 913.4 of the WRCRA provides the Secretary of the NYSDOS the authority "To review, evaluate and issue recommendations and opinions concerning programs and actions of State agencies which may have the potential to effect the policies and purposes of this article, including but not limited to, programs within the jurisdiction of the Departments of State, Agriculture and Markets, Environmental Conservation, Public Service, Commerce and Transportation, the Offices of Energy and Parks and Recreation and the Office of General Services." The Secretary shall exercise this authority to coordinate State agency programs with an affect on the coastal area.

In addition to the implementation of voluntary LWRPs, the NYSDOS and other State agencies will advocate a number of activities central to the NYCMP. The Secretary of the NYSDOS is also instructed, under the WRCRA, to encourage public and private institutions to preserve, protect enhance, develop and use coastal resources in a manner consistent with the purposes and policies of the WRCRA.

- 3 COMMENT: ...we suggest that local government be encouraged and given incentive to develop local comprehensive plans and zoning ordinances in accordance with the CMP coastal policies.

RESPONSE: The WRCRA provides the authority and incentive for municipalities to prepare programs for their coastal areas. By participating, local governments will be eligible to receive financial and technical assistance for the preparation and implementation of their waterfront revitalization programs. In addition, a major incentive of an approved LWRP is the requirement that State and Federal actions must be conducted consistent with the specific policies of the LWRP. Proposed local waterfront revitalization programs must be found consistent with the coastal policies prior to State approval (see Section 601.3(2) of the proposed DOS regulations). Comprehensive planning and zoning ordinances are two means for implementation of a local program.

The WR & CRA and DOS regulations (Part 601) and DOS guidelines for local waterfront revitalization programs require that these programs must be comprehensive, that is (1) they must include the entire coastal area of the locality, (2) they must be consistent with and further all applicable coastal policies (28 of the 44 policies are referenced in Part 601 of DOS regulations and 16 are found in other State laws to which localities must adhere or which do not relate to local government activity), and (3) the locality must have adequate legal authority, including appropriate land use controls, to implement the program. The guidelines for local waterfront revitalization programs (Appendix B) contain the most complete description of what a LWRP must be.

With regard to coordination of activities in areas where some communities have local programs and others do not, and the voluntary nature of such programs, the NYS CMP is a State program with adequate authority to implement all policies. Where a community wishes to participate by adopting and further detailing State policies, it is encouraged to do so. Where a community does not participate, all State coastal policies apply. Where a Federal action subject to consistency occurs in an area covered by both a participating and non-participating community, the more detailed policies of the participating community apply if that community's LWRP has been added to the NYS CMP either through routine program implementation or a program amendment. Local governments may participate in the program only if they prepare a comprehensive program they can receive project funding assistance only for priority projects specifically identified in an approved LWRP. This is described in the WR & CRA, DOS regulations, and DOS guidelines.

4. COMMENT: This concept should be carried through and mentioned in the "Content of Local Program" as well (page 655).

RESPONSE: See additional discussion included (Step 5(b)) on DOS technical assistance which will be available to the localities.

5. COMMENT: The Local Program should stress in sections (2) and (4) the importance of protecting environmentally sensitive areas and natural resources in developing a local strategy in accordance with the 44 coastal policies.

RESPONSE: The importance and requirement for protecting environmentally sensitive areas and natural resources is described in Part 2, Specific Guidelines, pages B-39 to 73 of the FEIS; in particular, Significant Fish and Wildlife Habitat - page B-39; Flooding and Erosion - page B-47; Historic Resources - page B-63; Visual Quality - page B-66; and Agriculture - page B-71. Part I, Section 2 references the specific guidelines of Part II.

6. COMMENT: We recommend that the draft EIS include (a) a time frame or notification of the NYSDOS by the involved State agencies and other parties when coastal issues are involved and (b) what type of legal or other action NYSDOS could take if it found a project inconsistent with the coastal policies.

RESPONSE: (a) The Coastal Assessment Form, page A-4 of the FEIS, and the SEQRA, page A-3 will assure NYSDOS is adequately informed, (b) See response to comments 2a and 2b above.

7. COMMENT: We recommend that (a) regional concerns be described, (b) GAPCs be designated, and (c) procedures for GAPCs be identified for inclusion in the final EIS.

RESPONSE: (a) Pages II-2-1 through II-2-13 of the FEIS describe the most significant regional concerns of the three major regions of the New York coastline, (b) three categories of GAPC's (which the NYCMP refers to as Special Management Areas) were identified in the DEIS: State parks, Estuarine Sanctuaries and LWRPs. This fulfills the requirements of 15 CFR 923.21, (c) a reference to the criteria and procedures for designation of areas for preservation (APRs) has been included in the introduction to Part II, Section 8, of the FEIS.

8. COMMENT: The draft EIS for the subject program should identify the relationship and procedures for coordination between the CMP and applicable State and local agency air quality plans pursuant to 15 CFR Section 923.56. Procedures for coordination should be more specific, clarifying the statement in the draft EIS that "mutual program review will concentrate on identification of the effect of each program upon the other." By explicitly stating procedures of coordination (e.g. for air quality management), the effectiveness of the voluntary participation in the CMP by local agencies will be increased.

RESPONSE: As to coordination with applicable State and local air quality plans, the NYSCMP at several stages was thoroughly reviewed by NYS DEC, Division of Air Resources. All comments suggested, additions and deletions were fully incorporated in FEIS. Any future revisions or changes to applicable State air quality plans will be subject to review procedures to ensure consistency with coastal policies, including the policy requiring adherence to the Clean Air Act as a minimum. Furthermore, the preparation of local waterfront revitalization programs will undergo review by applicable State and local agencies to ensure that the program is not contrary to existing air quality plans.

9. COMMENT: It is recommended that the plan provide a clear statement that the requirements of the Clean Air Act (CAA) are the minimum air pollution control requirements applicable within the coastal zone. Also, the CMP should incorporate the air pollution control requirements pursuant to Section 307(f) of the Coastal Zone Management Act. The CMP should provide explicit, legally binding procedures for ensuring that the requirements of the CAA are not impaired.

RESPONSE: The explanation of Policy 41 is amended to state clearly the requirements of the Clean Air Act are the minimum air pollution control requirements applicable within the coastal area, and that all requirements of the State pursuant to the Clean Air Act are incorporated (by reference) in the CM program.

As to ensuring that CMP will not impair the requirements of CAA, the WRCRA provides that "nothing in this Article shall be construed to authorize or require the issuance of any permit, license, certification or other approval...which is denied by the State agency having jurisdiction pursuant to other provisions of law or which is conditioned by such agency pursuant to other provisions of law until such conditions are met.

10. COMMENT: CMP should discuss the relationship between its growth policies and those being implemented pursuant to the air quality plans, where applicable.

RESPONSE: The above provisions of Article 42 also govern the relationship of CMP development policies with air quality plans, that is, the development policies are limited by all other coastal policies including provisions of law relating to air quality.

11. COMMENT: The program should expand the identification of whether the air quality control region (AQCR) within the coastal zone is meeting primary and secondary National Ambient Air Quality Standards (NAAQS) by referencing the Code of Federal Regulations 40 CFR Part 52 Section 52.1682 and by discussing how, in general, air quality considerations will be factored into the coastal decision-making process. The CMP should encourage reliance on new source reviews of major emission sources as one of the initial, major determinants of the permissibility of certain uses. The CMP should recognize the potential adverse air quality impacts (primary and secondary) of smaller scale commercial and residential development which are not subject to new source review.

RESPONSE: With regard to points raised, the NYS CMP incorporates by reference the requirements of the CAA as the minimum pollution requirements and all requirements of the State pursuant to the CAA. Further elaboration is not required for approval under the CZMA.

COMMENT: Identification should be provided on how the CMP would provide for coordination with the Federal permitting processes in areas of the coastal zone where one or more local agencies are not participating while other local agencies are participating.

RESPONSE: The NYSDOS, as the single State agency identified pursuant to 15 CFR 923.53 responsible for consistency review of proposed Federal actions, is responsible for securing necessary review and comment from other State, regional, or local government agencies. It is the only State agency authorized to comment officially on a Federal consistency determination, concur with or object to a consistency certification, or determine the consistency of a proposed Federal assistance activity, regardless of whether local governments participate in the NYCMP (See 15 CFR 930). Where local governments have approved LWRPs, these plans will provide more specific policies in addition to the Statewide policies for the NYSDOS to consider in making its Federal consistency comment review. See also response to comment 3, above.

13. COMMENT: The CMP should indicate if it is possible for a local agency to participate only in particular projects of its choosing (with full or limited funding).

RESPONSE: See response to comment 3 above

14. COMMENT: In general, it is felt that voluntary participation in the subject program by local agencies will reduce the effectiveness of the overall CMP. It appears that local non-participation may be offset to some extent by State authority in the areas of erosion hazards and water dependent uses, due to recent State legislation. However, the air quality management program will still be largely dependent upon the NYS Department of Environmental Conservation. This may become the case in both participating and non-participating local areas unless the CMP identifies and implements procedures for coordination in these areas.

RESPONSE: The NYCMP is sufficiently comprehensive and specific at the State level, and therefore needs to be strengthened and/or made more specific and predictable only where a locality feels it necessary to ensure that its priorities are met. The approval of a LWRP does not substitute for or replace the authorities or controls of the State over coastal resources. Instead, LWRPs will provide additional specificity in policies and priorities for the relevant coastal area.

You are correct that the program does not alter the air quality program, but incorporates it as mandated by 307(j) of the CZMA.

15. COMMENT: The description entitled "Implementation" under Policy 39 needs to be updated to reflect that assistance to states for state solid waste plan development and for resource recovery feasibility under Section 4008 of the Resource Conservation and Recovery Act ceased effective October 1, 1981.

RESPONSE: Neither NYC nor NYS policy 39 refers to this program.

16. COMMENT: In addition, New York State has not submitted a final statewide solid waste plan to EPA for approval, and indications are that no plan will be submitted prior to January, 1983.

RESPONSE: No response necessary.

17. COMMENT: Executive Orders 11988 (Floodplain Management) and 11999 (protection of wetlands) provide for protection of floodplain and wetland areas: (a) With regard to Policy 44, we believe it is important to provide additional consideration to protect freshwater and tidal wetlands less than 12.4 acres in sites that are unique or of local significance to be consistent with these executive orders, (b) in the description of "Content of Local Program," freshwater and tidal wetlands should be included in the list of environmentally sensitive areas to be inventoried and afforded protection.

RESPONSE: (a) The 12.4 acre threshold only applies to freshwater wetlands; not tidal wetland areas. The majority of freshwater wetlands which are less than 12.4 acres in size and that are unique or of local significance are afforded protection by this law or under the Protection of Water Laws Act. See discussion of this implementing authority on pages II-6-188. All freshwater and tidal wetlands that are unique or are of local significance and that meet the criteria described under Policy 7 for designation as a significant habitat, pages II-6-35 to 41 will be mapped on the Coastal Area map, (b) Wetland protection is fully covered by the wetlands laws and the Stream Protection Act.

D. Federal Energy Regulatory Commission
Carl N. Shuster, Jr., Ph.D.
Coordinator, Coastal Affairs

1. COMMENT: In general, the proposed procedures and policies raised no serious problems directly related to energy facility development.

RESPONSE: No response necessary.

2. COMMENT: In the New York City program we are particularly concerned about prohibition of facilities associated with liquified natural gas (LNG) tankers. The prohibition is not based on defensible standards and does not provide sufficient justification. Furthermore, we believe such an outright prohibition conflicts with sections 306(b)(8) and 306(c)(8) of the CZMA.

RESPONSE: This policy has been revised. It does not prohibit LNG facilities, but requires consideration of State and national energy needs, public safety concerns and the necessity for a shorefront location. As is noted in Appendix G on page 50, New York City has two functioning LNG plants.

3. COMMENT: Revisions to list of Federal Licenses and Permits are submitted.

RESPONSE: These revisions are incorporated.

4. COMMENT: There is no statement in the energy facility siting process indicating that Federal review and approval is necessary for hydroelectric generation facilities.

RESPONSE: In this section there is no mention of the variety of Federal reviews that are needed for most of the facilities described. To repeat all the Federal reviews would add unnecessary length to the document.

5. COMMENT: The 1: 48,000 scale maps were not distributed with the DEIS and thus the requirements of 923.31(a)(8) are not met.

RESPONSE: 923.3.(a)(i) requires that the State *must* be able to advise interested parties whether they are within the boundary within 30 days. The text of the Boundary Section gives the reader an understanding of whether they are within the coastal zone. During the first year of program implementation the State will submit the detailed boundaries to Federal agencies.

E. Housing and Urban Development
Stephen J. Bothinger

1. COMMENT: Our staff consulted with the State staff responsible for development and preparation of the CZMP at frequent intervals over the past several years. We have had opportunity to review and comment on applicable chapters. All HUD suggestions have been incorporated.

RESPONSE: No response necessary.

2. COMMENT: We endorse the proposals and recommend approval. We plan to begin immediate steps to continue our coordination with the State after approval of the program.

RESPONSE: No response necessary.

F. Department of Interior
J. Robinson West
Office of the Secretary

1. COMMENT: Notwithstanding the significant achievement represented by this program, the Department has several major concerns.

RESPONSE: See responses below.

2. COMMENT: The State's policy 29 to "encourage the development of energy resources on the OCS" appears to be inadequate to meet the CZMA because it lacks an implementing mechanism at either the State, regional or local level. We believe the State could resolve our concern by including an OCS oil and gas-specific discussion in the section of the Energy Facility Planning Process which covers assessment of energy site suitability.

RESPONSE: See revised section on Energy Facility Siting Process.

3. COMMENT: If the State allows local or regional coastal plans to include site suitability assessment procedures, these plans should be considered amendments to the State plan.

RESPONSE: All local programs must be consistent with the 44 State policies, including Policy 29. In the event a local program would propose a site suitability assessment procedure for OCS facilities that would significantly differ from guidelines contained in Appendix B, such local program would be considered an amendment.

4. COMMENT: The question of what, if any, OCS leasing activities "directly affect" the coastal zone is in litigation. The FEIS should indicate the State reserves the right to request consistency determinations pending outcome of the legislation.

RESPONSE: While the appeal is pending in the Ninth Circuit Court Appeals on the question of which OCS activities directly affect the coastal zone, the State intends to review leasing activities as stated in the DEIS.

5. COMMENT: It must be made clear to the State that Section 307(c)(1) of the CZMA regulations requires the head of the responsible Federal agency to determine whether an agency program activity outside the coastal zone directly affects the coastal zone.

RESPONSE: See revised section which clarifies this point

6. COMMENT: We do not believe it is appropriate to list "operating orders" as a Federal activity that is subject to consistency review.

RESPONSE: Operating Orders have been deleted.

7. COMMENT: Policies 11 through 17, which deal with barrier island structures, while recognizing their protective value against flooding and erosion, do not consider that these features are actually shifting position.

RESPONSE: The shifting position of the beaches is more fully described in Section 5, Coastal Issues. It would be redundant to repeat the description again.

8. COMMENT: The NYCZMP should be expanded to include provisions supporting sand and gravel mining.

RESPONSE: See Policy 15 and additional information added in Section 5.

9. COMMENT: There has been inadequate Federal-State coordination in preparation of the program.

RESPONSE: Appendix C adequately documents Federal-State consultation. In addition to statewide public hearings, copies of various drafts have been sent to Federal agencies with requests for comments. Ongoing consultation will continue during program implementation.

10. COMMENT: The environmental analyses of the NYCZMP is more of an explanation and rationalization of the proposed program than it is an analysis. It says future impacts will be recognized by the EIS but does not document them.

RESPONSE: The document adequately describes and analyses the impacts of the proposed program. In any situation when discussing likely future impacts, the impacts cannot be documented.

11. COMMENT: Page 20 - Paragraph 3 - DOI suggested updated statistics.

RESPONSE: See revisions, suggestion incorporated.

12. COMMENT: Page 24 - The Hudson River is used as a drinking water source by Poughkeepsie.

RESPONSE: See revisions, suggestion incorporated.

13. COMMENT: Page 25 - Paragraph 3 - suggests addition of two fish.

RESPONSE: See revisions, suggestion incorporated.

14. COMMENT: Page 27 Paragraph 3 - identify lake sturgeon and add information on stocking program and hatchery.
- RESPONSE: See revisions, suggestion incorporated.
15. COMMENT: Page 46 - All potential and existing pollutant sources should be determined and recorded to the extent possible.
- RESPONSE: To do so would add unnecessarily to the length of the document and is not a requirement for approval under the CZMA.
16. COMMENT: Page 49 - Continued interagency involvement is essential. The NPS can better inform its visitors of such issues with better inter-agency coordination.
- RESPONSE: See revision, suggestion incorporated.
17. COMMENT: Page 63 - A discussion of mineral resources should be included in Section 5 - Coastal Issues. The NYCZMP should indicate basic mineral information and describe how the program supports necessary mining activities.
- RESPONSE: See expanded discussion of sand and gravel extraction in Section 5.
18. COMMENT: Page 70 - This section should address the impact of pollutants upon the developing salmonid fishery of Lake Ontario.
- RESPONSE: These impacts are addressed in paragraphs 1, 2, & 3 of page II-5-7.
19. COMMENT: Page 74 First Paragraph - Text should be changed to reflect difference in dunes on Long Island and Lake Ontario.
- RESPONSE: See revision, suggestion incorporated.
20. COMMENT: Page 77 Fourth Paragraph. Indicate that Lake Ontario Shoreline Protection Study is looking into means of providing cost-sharing for shoreline protection.
- RESPONSE: See revision, suggestion incorporated
21. COMMENT: Pages 131-133 - In view of the Fish and Wildlife Service, landfill projects in the near-shore areas of a major port may not always be acceptable even if the adverse impacts are minimized.

RESPONSE: The CZMA does not affect the Services' responsibilities to deny permits where it determines them inappropriate. We are anticipating that the NYCZMP will serve to help coordinate various Federal and State agencies with overlapping responsibilities and that all efforts to resolve such differences will be attempted.

22. COMMENT: Page 141 - This page should either be deleted or more clearly define why certain types of development are exempted and what constraints still do apply.

RESPONSE: The reasons why these are exempted are clearly stated in the text. All the other coastal policies except Policy 5 still apply to these eight exempted uses.

23. COMMENT: Page 155 - Non-point source pollution should be recognized in the impact analysis of this policy.

RESPONSE: See additions made.

24. COMMENT: Page 167 - We support Policy 11, but caution that long range trends of erosion and accretion may be erratic.

RESPONSE: Agreed. This difficulty is recognized in the "Shoreowners Protection Act" by the required review of recession rates every ten years or less if warranted.

25. COMMENT: Page 175 - We do not believe the State or this CZMP can establish a scientifically justified success probability to determine what is a reasonable probability "of erosion control success". Natural sediment re-establishment should be considered.

RESPONSE: While it may be difficult to define absolutely "reasonable probability" the intent of the policy and of "the Shoreowners Protection Act" is clearly to impose performance standards on the use of erosion control structures. Natural sediment budget re-establishment has been considered and is encouraged in Policy 12.

26. COMMENT: Page 185 - Protecting existing man-made structures are generally costly, ineffective and counterproductive on natural barrier islands. Numerous existing private structures on Fire Island could present long-term problems.

RESPONSE: The limiting nature of the policy fully accounts for the problems mentioned.

27. COMMENT: Page 187 - Reshaping natural dunes conflicts with NPS management policy at Fire Island National Seashore.

RESPONSE: The reshaping of dunes is not included in Policy 17 as a non-structural measure. In any event, the Fire Island National Seashore is classified as excluded Federal lands.

28. COMMENT: Page 245 - Policy 26 is generally acceptable provided agricultural activities do not adversely impact aquatic and ground water systems.

RESPONSE: Agreed.

29. COMMENT: Page 265 - Energy resource recovery on the OCS could significantly impact the ocean and inner bay of Fire Island National Seashore. The impact analysis of this project should recognize such potential.

RESPONSE: See revision, suggestion incorporated.

30. COMMENT: Page 269 - The periodic adverse effects of offshore sewage sludge disposal at FIIS-NS gives us serious reservations about such offshore disposal and lead to support of Corps of Engineers' Interagency Steering Committee.

RESPONSE: Your concerns were adequately reflected in the policy in the DEIS.

31. COMMENT: Page 279 - The guidelines established in the policy are praiseworthy but difficult, if not impossible, to enforce. We recommend local site specific dredge spoil plans and that NPS be involved where relevant.

RESPONSE: Agreed. Local site specific dredge spoil plans could be conducted with coastal management funds. A dredging plan for Long Island has been prepared by the LIRPB and ten-year plan for the Hudson River has been prepared by the Corps of Engineers.

32. COMMENT: Page 283 - This is an excellent policy to minimize non-point source discharges and could be refined by local management plans.

RESPONSE: Agreed.

33. COMMENT: Page 285 - Despite these rules and regulations, ground water contamination on Long Island is increasing. This presents a threat to Fire Island National Seashore water resources.

RESPONSE: See clarifications.

34. COMMENT: Page 297 - We concur fully with this policy. However, the impacts on mosquito control programs should be considered in greater detail.

RESPONSE: Mosquito Control activities are addressed in both the Fresh Water Wetlands Act (Section 24-0701.6) and Tidal Wetlands (Section 25-0401.5) See pages 58 and 50 respectively in Volume 2 of this document for these discussions.

35. COMMENT: A list of changes to DOI agency names are submitted.

RESPONSE: Changes incorporated.

36. COMMENT: Page 336 - Federal licenses or permits are not in themselves subject to consistency, nor are OCS plans; it is the activities requiring a Federal license or permit which are subject to consistency review.

RESPONSE: See change in title and text on page II-9-14 on licenses and permits and OCS plans to reflect it in the activities.

37. COMMENT: Page 345 - "Department of Interior, Mineral (sic) Management Services": Permits to drill are exempt from CZM review by 15 CFR 930.80, if the activity to be permitted is already subject to review in the Plan of Exploration or Plan of Development (POD) review process. OCS pipelines, gathering and flow lines described in detail in approved POD's would likewise be exempt from further CZM review.

RESPONSE: Agreed, if it is an activity described in detail in the POD

38. COMMENT: Page 370 (Figure 6) - It is imperative that any developmental activities be closely coordinated with Gateway National Recreation Area (GATE-NRA), as well as the U.S. Fish and Wildlife Service (USFWS).

RESPONSE: Agreed.

39. COMMENT: Page 348 5th Paragraph. The text should indicate that not all commercial fishing in the Hudson River has been banned, but only for those species which continued testing show to contain unsafe levels of toxic materials.

RESPONSE: See revisions.

40. COMMENT: Pages 422-423 - In coordination with the Corps of Engineers, positive steps should be taken to assure that "clean and suitable" dredge sands are not dumped at sea but used in a more useful manner (beach nourishment, etc.)

RESPONSE: See revisions.

41. COMMENT: Page 471 - Exxon spudded its first well in the Baltimore Canyon in 1978, not 1976.

RESPONSE: Change incorporated

42. COMMENT: Page 482 - Policy 39, New York City Policy J). The recommendation for re-negotiation with extension of the major landfill activity in GATE-NRA is not consistent with written agreements and documented understanding by NPS that such activity will not continue beyond December 31, 1985.

RESPONSE: Discussion of re-negotiation has been deleted. Current agreements call for the closure of Fountain and Pennsylvania Avenue landfills by 12/31/85. New York City is aware of FAA, USFWS, and NPA concerns and will continue to cooperate with all Federal, State and local agencies with regard to end-use plans and future closures.

43. COMMENT: Page 632 (Item 4) - While true as far as it goes, this section deals with only the response during a given storm; a greater time frame is necessary to include the effects of stabilization of the barrier. In the next year, more will be known about how important the inlet, overwash, and wind transport processes are on Long Island based on the expected results of the Federal interagency study of beach erosion control and hurricane protection on southern Long Island.

RESPONSE: As new management techniques appear scientifically valid, they can be incorporated into the program: we look forward to the results of this study.

44. COMMENT: Page 636 (Item aa.). There are no criteria for establishing how the "recession rate" is to be consistently measured. What is the "long term" time duration base, does it include major storms, and which line of retreat is measured "receding edge" or MLW (mean low water)?

RESPONSE: For clarification, see Section 505.3(j); which defines "structural hazard area". The basis for the calculation of long-term recession rates includes historical aerial photography as well as current photography flown especially for this purpose, maps and field surveys. The time base for recession rate calculations is 30 years but the data will be scrutinized to ensure that major storms do not distort the record.

45. COMMENT: Page 638 (Item 11). "Toe" should be the lowest point on the slope of the dune; either where it joins the beach or in the intervening swale between the primary and secondary dunes.

RESPONSE: See revision.

46. COMMENT: Page 641 (Item b). It is very difficult to establish or document in advance that a proposed structure will (or will not) cause a measurable increase in erosion rates nearby.

RESPONSE: Given the other two criteria that must be met, this standard appears reasonable. The burden of proof is on the applicant to show no measurable increase.

47. COMMENT: Page 645 (Item 7). What is the penalty and means for enforcement of these provisions to limit use of motorized vehicles on beaches?

RESPONSE: The "Shoreowner's Protection Act" contains no provisions for penalties. However, the municipal, county or State agency administering local erosion programs has available various legal sanctions to impose on violators of any of the sections of the Act.

48. COMMENT: Page 649 (Item b). We are aware of few if any erosion protection structures which have demonstrated success in controlling long-term beach erosion.

RESPONSE: Section 505.9(6) must be considered in conjunction with subsection (c) which requires a long-term maintenance program for their replacement as needed. Further, the State's coastal area has a wide range of shoreline environments some of which are more responsive to structural solutions.

49. COMMENT: Page 650 (Item b). It should be noted that the control of local bluff relief alone is not necessarily well correlated with the recession rate, and hence the setback requirements are rather arbitrary.

RESPONSE: These requirements are for moveable structures within the hazard area. The bluff set backs are correlated with recession rates but are designed to avoid new development on the portion of the bluff prone to sudden failure along slip planes.

50. COMMENT: Page 652 (Item 3). Because of the deficiencies regarding the lack of an established methodology for determination of recession rates (as noted above on page 636), anyone with a newer, albeit inferior, data set could challenge hazard designations and tie up the appeals processes. What is the long term? What is the acceptability of data resources such as field surveys, maps or aerial photos?

RESPONSE: The 30 year setback is established in "The Shoreowner's Protection Act." The hazard designations are based on field surveys, maps and current and historical aerial photos. The sole acceptable basis for appeal of a recession rate is to show that it has been incorrectly calculated (Section 505.11). See also response No. 44.

G. Nuclear Regulatory Commission
Frank W. Young
State Relations Section

COMMENT: We find that the program, as far as the siting of energy facilities is concerned, has been structured on existing regulations and policy. We are familiar with these and have cooperated with New York on the review of proposed facilities. We, therefore, have no comment.

RESPONSE: No response necessary

H. Department of Transportation
Richard F. Walsh, Director
Office of Economics

- 1 COMMENT: Many of the policies, particularly #1, 7, 20 and 26 are sound and well developed.

RESPONSE: No response necessary.

2. COMMENT: Policy 14 (erosion protection structures) - By prohibiting the construction and reconstruction of these structures where there would be a measurable increase in erosion or flooding at or near the site, no recognition is given to the protection of existing investments in the area.

RESPONSE: Normal maintenance and repair of existing erosion protection structures does not require an erosion hazard area permit (see proposed Coastal Erosion Management regulations, Part 505, Appendix A). Existing investments can be protected provided the methods chosen for protection, structural or nonstructural, meets the regulations, standards and criteria necessary to implement this policy; which are contained in the guidelines for the policy and in Appendix A. Note also that if the reconstruction essentially reproduces the old structure, there is less likelihood that it would cause a measurable increase in erosion.

3. COMMENT: Policy 22 (shoreline development and provisions for recreation) . Unfortunately, civilian recreational use of Coast Guard and other military facilities on a regular basis cannot be allowed due to safety and security problems.

RESPONSE: We agree; although for some locations, land areas not directly or immediately needed by the facility could, with the permission and cooperation of the Coast Guard, be used periodically for recreation.

- 4 COMMENT: Policy 23 (historic resources) - The use of a 500 foot perimeter as a boundary of environmental impact seems arbitrary (pp. 232-33).

RESPONSE: A 500 foot perimeter is used because numerous New York State land use regulations use this figure in calling for review of adjacent uses (State parks, municipal boundaries, etc.)

5. COMMENT: Policy 28 (ice management practices) - The Coast Guard is unaware of any past adverse effects from its domestic icebreaking operations on electric power.

RESPONSE: Past ice management activities by the Coast Guard may not have had adverse effects on the production of hydro-electric power. However, the intent of this policy is to require, for present and future activities, the assessment and prevention or mitigation of adverse impacts on fish and wildlife, the production of hydro-electric power, and shoreline erosion or flooding.

- 6 COMMENT: Policy 34 (discharge of waste material from vessels) - To prohibit discharge of sewage from all watercraft seems inconsistent with previous statements reflecting the desirability of providing less than secondary treatment for wastewater treatment plants discharging millions of gallons of sewage per day, while watercraft discharges are relatively insignificant.

RESPONSE: Discharges are already being regulated by the State under Navigation Law (Section 33-C). The prohibition of vessel waste disposal at discrete locations (such as significant fish and wildlife habitats, recreational areas and water supply areas) should provide a very effective means of protecting these areas. The effect of these vessel wastes at these particular areas is by no means insignificant. On the other hand, recent scientific studies indicate that it is not always ecologically desirable to require secondary treatment of sewage being discharged into open marine environments where assimilative capacities are great and ambient nutrient levels are well below acceptable State standards.

COMMENT: Policy 35 (dredging and dredge spoil disposal) - No recognition is given to the difference in environmental and economic effects from maintenance versus new dredging, nor is there a discussion on what critical areas and impacts are most important to avoid and when.

RESPONSE: Additional guidance necessary to determine consistency of an action with this policy has been added to the explanation of policy. Appropriate references have also been cited.

9. COMMENT: Policy 44 (wetlands) - It would be useful to list at least the basic standards for New York's four categories of wetland uses.

RESPONSE: Standards for the four categories of wetland uses are provided in the regulations found on page 94 of Volume II.

- 10 COMMENT: Mitigation measures for wetland development should be discussed

RESPONSE: See Freshwater and Tidal Wetland regulations in Volume II, which include mitigation measures.

11. COMMENT: There is a need to include specific policies on coastal structures (bridges, submerged infrastructures, dams, etc.).

RESPONSE: We disagree. The direct and significant impacts on the coastal area of activities involving coastal structures/construction are adequately addressed and considered in the comprehensive set of 44 policies described in Part II, Section 6.

12. COMMENT: There is a need to distinguish types of water bodies (rivers, lakes, ocean, etc.) and ecosystem/habitats (shellfish beds, finfish, migratory pathways, etc.) and to integrate these elements into a coherent set of policies.

RESPONSE: The policies described in Part II, Section 6, are applicable to the entire coastal area. Policy 7, the protection of significant fish and wildlife habitats, is the primary policy which addresses the protection of habitats. The variability in habitats that exists in rivers, lakes, wetlands and other types of subecosystems is accommodated for in the new policy guidelines provided in Policy 7.

13. COMMENT: On page 104, paragraph 4: the words "waters of the United States including the territorial seas" should be substituted for "estuarine" in the discussion of marine sanitation device regulations (from 33 CFR 159.1).

RESPONSE: See revision.

14. COMMENT: Page 338, paragraph 5: We recommend that the New York State Department of Environmental Conservation (DEC), rather than the Department of State, handle consistency reviews for bridge projects since all bridge permit actions require, at minimum, a water quality certificate issued by the DEC. Often wetland and construction permits are also required. This would make for better coordination between Federal agency applicant and State.

RESPONSE: Only one State agency may be designated as the sole reviewer of Federal consistency determinations (15 CFR 9/30.18). The Department of State's mandate makes it most suitable for the variety of policies in the Program. DEC input to this decision will be important.

15. COMMENT: Page 339, paragraph 3: All Coast Guard bridge permit actions require circulation of a public notice. New York's requirement for public notice for license/permit consistency review would be combined with the Coast Guard's process to minimize delays and paperwork.

RESPONSE: The suggestion is appreciated and contact will be made with the Coast Guard, following Federal approval, to examine the possibility of combining permits. Policy 6 on page II-6-31 calls for expediting permit procedures and Department of State gives this a high priority. The U.S. Coast Guard's cooperation in this matter is welcome.

16. COMMENT: Page 343 of the document lists Coast Guard activity which the State of New York feels likely to require a consistency determination including:

- Location, placement or removal of navigation devices. Although generally stated, we assume this refers to short range aids, buoys, daymarks, radar towers, etc. This does not directly affect the coastal zone and should be deleted;
- b. Expansion, abandonment, and designation of anchorages. Anchorages are not licensed or permitted, they are designated by regulation;
- c. Expansion, abandonment and designation of lightering areas. Lightering areas are not licensed or permitted. This does not directly affect coastal zone and should be deleted;
- d. Expansion, abandonment, and designation of shipping lanes. Shipping areas are not licensed or permitted, they are designated by regulations. This does not directly affect the coastal zone and should be deleted.
- e. Expansion, abandonment, and designation of pilot areas. The Coast Guard does not establish pilot areas. The intent of this particular citation is unclear to us. Contact with personnel from the New York Department of State did not clarify this issue since they also were unsure as to its reference. This should be deleted.
- f. Ice management practices and activities. This does not directly affect the coastal zone and should be deleted.

RESPONSE: Regarding items a, c, d, and f, we disagree. These activities may directly affect New York's coastal area and are subject to the Federal consistency provisions of the NYCMP. Regarding item e, pilot areas, this has been deleted. Regarding the comment that b, c, and d above are not licensed and permitted activities -- we agree. However, they are direct Federal activities and therefore should not be deleted from consistency review. They will be listed in the FEIS under Table 2, Section 1, Direct Federal Activities and Development Projects. Regarding item b, navigation devices, these activities have been revised and are now more narrowly defined. These revisions are intended to avoid unnecessary submissions of consistency certifications.

17. COMMENT: Appendix D, addressing excluded Federal land on pages 737-739, requires a few corrections:

- a. Bellport Station and St. George Base should be deleted (the Coast Guard no longer owns them);
- b. Cape Vincent Light Station should be listed as containing 0.6 acres;
- c. Carlton Island Light Station is now owned and maintained by the St. Lawrence Seaway Development Corporation. The complete reference to Carlton Island Station should be deleted;
- d. The reference to Gallo Island listed with properties under license to the U.S. Coast Guard, Ninth Coast District, should be deleted;

- e. The reference to the HF/FM Antenna Tower in Rochester listed with properties under license to the U.S. Coast Guard, Ninth Coast Guard District, should be deleted.

RESPONSE: Corrections have been made as suggested.

Federal Aviation Administration
Elliott Summer

1. COMMENT: Wording on page 337 suggests all FAA activities in the State would need a consistency determination.

RESPONSE: See changes in wording which inserts "located in or directly affecting the coastal zone."

2. COMMENT: Page 482 recommends two landfill sites at Gateway National Recreation Area have their termination dates extended so that end-use site plans can be fully developed. These two sites present a serious bird hazard to aircraft operations into and out of JFK Airport. There is time to develop the land use plans before the 1985 closure date.

RESPONSE: Current agreements call for the closure of these landfills by 12/31/85. New York City Department of Sanitation is exploring alternative means to waste disposal and is moving forward with the planning phases of two resource recovery facilities. These projects would help reduce the amount of waste currently being landfilled.

New York City Department of Sanitation is required through NYCRR, Part 300 to develop end-use plans for all landfills operated by the City. End-use plan for Foundation Avenue should begin shortly.

New York City has tried several tests of proposals designed to disburse the seagulls. Unfortunately, none of the procedures tested have been shown to be effective. New York City has always been responsive to any program the FAA is interested in pursuing to help ameliorate the seagull problem and will continue to fully cooperate.

SECTION 2

RESPONSES TO STATE AND LOCAL WRITTEN COMMENTS ON THE DEIS

A. W. C. Hennessy
Commissioner
New York State Department of Transportation

1. COMMENT: For many of the Department of Transportation projects multiple consistency determinations will be necessary. This amount of effort seems excessive and redundant. This process is further complicated at the Federal level, for permit and funding actions are governed by different procedures and additional policies. Administrative efforts could be reduced if a "lead agency" was made responsible for the consistency determination which is based upon a single set of criteria.

RESPONSE: When two or more Federal agencies are involved in determining the consistency of a project with a state's coastal management program, the agencies are encouraged, but not required, to coordinate their reviews and develop a single consistency determination. If Federal agencies choose this approach, administrative efforts will be reduced. It is expected that the evaluation of a project involving Federal actions will be performed during the NEPA review process. Consistency determinations are made with a single set of criteria. Federal agencies utilize the policy statements, explanations and guidelines in the program document. State agencies use the DOS Part 600, Section 600.5 regulations which contain the same criteria except for criteria which are a part of other existing State law already applicable to the actions of state agencies. There is not a "lead agency" for making consistency determinations (each Federal agency has the responsibility for determining the consistency of its proposed actions in the coastal area). However, the NYS DOS has been designated the State "lead agency" for review of consistency determinations.

2. COMMENT: The discussion of the Federal consistency process in the CMP/DEIS document does not identify a class of projects which have no significance and thus do not require a consistency determination. There are many Department of Transportation projects which are of small magnitude and have no significance to the objectives of coastal policies. Projects which are categorically excluded from NEPA should not be subject to the consistency process

RESPONSE: Specific types of transportation projects and activities which are likely to affect New York State's coastal area are subject to the Federal consistency process if identified in Table 2, pp. II-9-18 to 25. Federal agencies determine if a proposed project will affect the State's coast. Federal regulations pertaining to this process do not provide for categorical exclusion such as those under NEPA. The State's consistency process does exclude actions based on their significance. Actions which are considered "Type II" under SEQR are not subject to the state consistency procedure. Further, any actions which have been excluded from the SEQR provisions, are excluded from the State agency consistency process.

3. COMMENT: The discussion on page 3 concerning the lack of coordination among State agencies is misleading. The SEQR process requires and has resulted in effective coordination among agencies. Attributing successful coordination to CMP is inaccurate.

RESPONSE: This discussion has been revised to reflect more accurately the coordination among state agencies.

4. COMMENT: The A-95 process is not working effectively and should not be used for Federal consistency purposes. An alternative means of handling Federal consistency determination should be found. NEPA is an adequate mechanism for determining consistency.

RESPONSE: If the A-95 process is found to be ineffective, the Department of State will work with the Federal agencies to develop other means of notification for financial assistance activities. NEPA will be used, to the extent possible, for consistency purposes.

5. COMMENT: Staff training on the CMP and its requirements will be essential for the Department of Transportation.

RESPONSE: The Department of State will offer its assistance in such training endeavors.

6. COMMENT: The CMP/DEIS indicates that State agencies will be eligible for funding of their consistency review activities. The Department of Transportation has estimated that such activities will cost over \$50,000 per year.

RESPONSE: No response necessary

7. COMMENT: The policy pertaining to the protection of cultural resources is not coordinated with and extends beyond numerous existing regulations. The policy does not allow for balancing impacts on historic resources with other social, economic and environmental consequences. Existing regulations achieve the policy's objective.

RESPONSE: Article 42 of the Executive Law contains a general policy that calls for the restoration and protection of historic and cultural resources. The resources enumerated in the guidelines are already covered by the existing programs, except for a designated local landmark within the boundary of an approved waterfront revitalization program. This is consistent with Article 42 which requires that local waterfront programs promote and preserve historic and cultural resources and re-use of existing building stock. The actions of state agencies are to be consistent with such programs to the maximum extent practicable. The guidelines under this policy are drawn from the U.S. Secretary of Interior's guidelines for the rehabilitation of historic buildings. Thus, this policy and its guidelines are coordinated with other existing regulations.

As to the issue of balance, this is provided for in SEQR (Part 617), and in DOS (Part 600) regulations. In both regulations, procedures are designed to achieve the balance between competing values.

- 8 COMMENT: In many instances, the landward boundary of the coastal area is a roadway or some other right-of-way (ROW). This is reasonable, but it subjects improvements requiring additional ROW to the consistency process. If this ROW land does not have any coastal significance, then minimal ROW acquisition should not significantly affect the coastal area. Some mechanism should possibly be provided to facilitate the implementation of minor ROW widening projects.

RESPONSE: In most instances, the shoreward side of an existing ROW is considered the landward boundary. Thus, widening projects which are landward of this boundary would be outside the coastal area. In certain locations throughout the State's coast, existing ROW's are close to the shoreline. In those instances, the entire ROW and/or a specified distance landward of the ROW is in the coastal area. If these minor widening projects are deemed a "Type II" for SEQR purposes, then they would not be subject to the state consistency process. Even if not Type II, the CAF addresses coastal issues expeditiously and if determined not to have a significant affect, the CAF could be used as a quick tool for consistency. If Federal funds are to be utilized on the project, then the appropriate Federal agency would determine if the project affects the State's coastal area.

9. COMMENT: A special study on the need for treating stormwater runoff from roads, parking lots, lawns and industrial sites should be conducted.

RESPONSE: The feasibility of such a study will be investigated.

10. COMMENT: The discussion on state alternatives is not sufficient. Estimates of the amount and duration of program funding, the magnitude of administrative costs and project delays are not provided. The benefits of Federal consistency are discussed, but the possibility of achieving a similar degree of coordination through existing procedures is not examined.

RESPONSE: The proposed state action alternative has been revised to include estimates on the amount and duration of funding and costs to administer the CMP. Project delays are not anticipated, for the consistency processes -- both state and Federal -- are tied into or can be accommodated within existing review procedures. Under present Federal review procedures, Federal agencies are not required to uphold existing state policies or positions. Federal consistency requires Federal agencies to adhere to a state's coastal policies. In many instances the review procedures will be shortened as a result of the consistency procedures. This is significantly stronger than mere coordination.

- 11 COMMENT: Due to the limited availability of CMP funds, local governments should be informed of the level of financial assistance they they could receive before developing local programs.

RESPONSE: Refer to Part II, Section 4, pp. II-4-18 to 20 which discusses program funding, and Section 10, Part II.

12. COMMENT: The discussion on the Barge Canal (p. 66) should be deleted, because it does not accurately describe the operations of the canal and with the exception of two terminal points is outside the coastal area.

RESPONSE: The discussion on the Barge Canal has been deleted

13. COMMENT: The term "Geographic Area of Particular Concern" should be deleted from the New York City program

RESPONSE: The term has been deleted.

14. COMMENT: Changes to the New York State CMP and proposed regulations should be included in the FEIS.

RESPONSE: Such changes are required to be incorporated. Refer to this document.

B. Mary P. Bass

State of New York Metropolitan Transportation Authority

- 1 COMMENT: The MTA objects to guidelines which in part define a reduction in the existing level of public access to recreation resources in terms of reductions in the level of public transportation service and/or increases in fares to the resources. MTA feels that results of such guidelines would lead to the establishment of an unfair and unfeasible policy of reduced fares and/or subsidized service for a special group of users.

RESPONSE: The following modification has been made to this guideline to take into account MTA's need to make changes in service in order to satisfy systemwide objectives: "...use, and such reduction cannot be reasonably justified in terms of meeting systemwide objectives." In addition, with respect to increases in fares to the recreation resources, the underlined modification has been made to Subsection A(1)(d)(4) which should satisfy the concern about furthering differential fares, not now a policy: "There are substantial increases in the following: already existing special fares of public transportation to a public water-related recreation resource or facility;..."

2. COMMENT: MTA questions whether OCZM has the authority to adopt "guidelines" regarding mass transportation fares in the New York metropolitan region.

RESPONSE: The State of New York, not OCZM, is adopting the guidelines, since they are part of New York State's Coastal Management Program being submitted to OCZM for Federal approval.

C. Anthony Tozzoli
Director - Port Department
The Port Authority of New York and New Jersey

1. COMMENT: The discussion under Policy 3 in the New York City's local program indicates that the development plans and activities of the Port Authority will be subject to review by the Secretary of State and the City Coastal Commission. This is interpreted to mean that such plans and activities will be subject to study and not a review and approval procedure. The latter would be contrary to the intent of the bi-state legislation and in violation of the compact creating the Authority.

RESPONSE: Article 42 requires all state agencies to be consistent with the coastal policies. It provides no distinction between types of State agencies. State agencies must also be consistent to the maximum extent practicable with an approved local waterfront revitalization program. As required by the EGS Part 600 regulations and amendments to DEC Part 617, these determinations of consistency would be made by the State agency. The Secretary of State has the authority to review, evaluate, and issue recommendations and opinions concerning programs and actions of state agencies which may have the potential to affect the policies and purposes of this article. In the event the Port Authority were determined to be exempt from review by virtue of its bi-state legislation, it will be required to conform to the state program to the extent permissible under Section 307(e) of the CZMA.

2. COMMENT: Since the stated purpose of Policy 3 for the NYC WRP as explained on page 452 of the DEIS is to "ensure effective interface...", the following modification to the language of the explanation is suggested: "...to ensure effective interface between the Port Authority and State and local waterfront revitalization programs, the Secretary of State and City Coastal Commission will consult with the Port Authority in the development and implementation of the Port Authority's development plans and activities within coastal boundaries."

RESPONSE: The principal objective of Policy 3, as stated on page II-6-17 of the FEIS, and as elaborated on page 74 of Appendix G is "...to focus efforts on direct and positive actions to support the major port agencies, the New York City Department of Ports and Terminals and the Port Authority of New York and New Jersey, in order to promote their continued and increased vitality." To assure that this policy is achieved within the New York City coastal areas, the City Coastal Commission and the Secretary of State will consult with the Port Authority of New York and New Jersey, the Department of Ports and Terminals, and other affected interests early in the development and implementation of pertinent plans and activities. The Port Authority would determine the consistency of their proposed actions with the approved programs. Refer to the above response.

3. COMMENT: With regard to Policies 19 and 20, the merits of public access to the waterfront are recognized, and the consideration of safety which is cited in the CMP/DEIS is strongly supported. However, consideration must also be given to cost, insurance, liability and available space. Similar consideration should be incorporated under Policies 24 and 25 (Scenic Resources) so that the construction, operation and maintenance of essential port facilities are not constrained.

RESPONSE: Under both access policies, safety and cost considerations are to be factored into decisions affecting the provision of increased public access. The cost consideration would include the concerns for insurance, liability and space. Also, the provision of access would not be required until some public agency or private association assumes responsibility for maintenance and liability. As for the policy pertaining to significant scenic resources, port operations and construction that impair such resources would be inconsistent with this resource protection policy. However, it is possible that essential port facilities could be constructed elsewhere along the coast. Policy 25 suggests that consideration be given to protecting the scenic quality of the coastal area. Generally, this can be accomplished through proper siting of structures, screening and other efforts which would not constrain existing and future port activities.

D. Robert D. Vessels
Director, Office of Environmental Planning
NYS Department of Public Service

1. COMMENT: Access roads are maintained in connection with transmission rights-of-way (ROW). By working closely with involved utilities, these roads could also provide a means for implementing Policy 20.

RESPONSE: Agreed

2. COMMENT: The Public Service Commission's (PSC) policy relating to recreational development of transmission ROW is decided on a case by case basis rather than being an automatic part of every order issued. However, joint funding of recreational development for ROW's has been stopped until research on the health and safety effects associated with such ROW's is concluded.

RESPONSE: The discussion under Policy 22 B.3. has been revised accordingly

3. COMMENT: In the DEIS Section 7.2.a.ii.1 (p. 303), it is not clear that an application for transmission facilities is made to the New York State Department of Public Service while an application for steam electric generating facilities is made to the New York State Board on Electric Generating Siting and Environment.

RESPONSE: This clarification has been made.

4. COMMENT: The siting procedures in Article VII of the Public Service Law, discussed under Policy 27 of the New York City Program, relate to major electric and gas transmission facilities and do not apply to underground facilities located in cities with a population in excess of 125,000. Since new transmission facilities in the City of New York are likely to be located underground, their siting would not be reviewed pursuant to Article VII. Such facilities would, depending on location, be subject to a variety of State permit programs, including water quality and wetlands programs.

RESPONSE: This information is now reflected under New York City Policy 27.

Louis M. Condra, Jr.
Director
Division of Regulatory Affairs
New York State Department of Environmental Conservation

1. COMMENT: The proposed filing requirement, with regard to "Unlisted" actions in the coastal area, is burdensome and unnecessary. The volume of activities affected by this requirement is potentially high. "Unlisted" actions receiving a negative declaration should be excluded from the procedural requirements of Part 600 regulations.

RESPONSE: Article 42 of the Executive Law does not qualify which of the direct actions taken by State agencies should be subject to the consistency requirements contained in Section 919(1). In the development of the proposed Part 600 regulations, it was determined that "Type II" actions would not likely affect the achievement of the Article 42 policies. "Unlisted" actions, however, cover a wide range of activities which, even if they have no significant effect upon the environment, could either assist in or impede the achievement of coastal policies. The exclusion of this group of "Unlisted" actions would affect the capability of the Secretary of State to administer the State's coastal program.

2. COMMENT: The proposed Part 600 regulations should reflect the streamlining of regulatory requirements for insignificant "Unlisted" actions.

RESPONSE: Streamlining existing and future State and other agencies regulations is one of the objectives of the CMP as well as the Office of Business Permits. This objective was, in part, achieved by incorporating the consistency requirements of Article 42 into the Part 617 SEQR regulations. In order to properly administer Article 42, however, additional procedures are necessary to ensure that State agency actions which do not have any significant effect upon the environment are being undertaken consistent with the coastal policies.

3. COMMENT: It should be made clear that the policies contained in an approved local waterfront revitalization program are not determinative on the matter of license issuance. Also, these policies are not to be substituted for specific standards and criteria contained in laws and regulations of State resource protection programs.

RESPONSE: If a proposed State permit action is inconsistent with the policies of an approved local program, then that permit cannot be issued unless conditions are imposed on the permit which would result in the action being consistent with the policies. At no time, however, can a State agency issue a permit unless the proposed action complies with existing State standards and criteria. This requirement is found in Section 915(8) of Article 42 and Section 600.3(5) of DOS regulations.

4. COMMENT: On page 20 there is a mistake in the oil spill estimate for the North Atlantic field operations.

RESPONSE: This mistake has been corrected and the probability percent updated in accordance with U.S. Department of Interior information.

5. COMMENT: All bays and wetlands along Lake Ontario, and not just Braddock Bay, support bass and perch populations.

RESPONSE: The text has been modified accordingly.

6. COMMENT: The intent of the maps on pp. 38-42 is unclear. Maps of the boundaries and Federal lands would be more helpful.

RESPONSE: As indicated on page II-3-5 of the document, the purpose of the maps on pp. II-3-8 to 12 was to illustrate how some of the boundary criteria were applied in various areas of the State. Maps of the State's Coastal Area, showing boundaries and excluded Federal lands, were officially filed with state agencies in December, 1981. Inclusion of those maps in the CMP DEIS would have added considerable bulk to an already voluminous document.

7. COMMENT: The discussion on development in the section on coastal issues does not reflect comments previously submitted by DEC on infrastructure revitalization needs.

RESPONSE: The need to rehabilitate water and sewerage facilities are only part of the total need to revitalize and restore the State's deteriorating and underutilized waterfronts. In the guidelines on Policy 5, recognition is given to the need for rehabilitating essential public facilities and services. Also, the condition of these vital facilities are currently under study by the State Legislature. The results of that study may be incorporated into the CMP upon its conclusion and acceptance by the Legislature and Governor.

8. COMMENT: It was DEC's understanding that a separate policy statement on winter navigation would be included in the CMP DEIS.

RESPONSE: The Coastal Management Program does not contain separate policies on any given activity which may or may not be proposed. The Program policies have been developed and are intended to be used as criteria by agencies when making decisions on the appropriateness of any given proposed action. The policies address the potential effects on the coastal area of any proposed action. Incorporating a separate policy for winter navigation would set the stage for incorporating separate policies for each new major activity as it is being proposed. Over time this would result in an even lengthier, and ultimately outdated and useless document. The specific concerns which have been raised by DEC in regard to winter navigation are addressed in the State policies.

9. COMMENT: On page 73 the sentence should be changed to indicate that beaches are the most valuable coastal landform.
- RESPONSE: Change has been made.
10. COMMENT: Changes should be made to sentences pertaining to damages caused by storms.
- RESPONSE: Suggested changes have been made.
11. COMMENT: The issue discussion and policy on new energy sources should emphasize that Article 23 of the ECL prohibits production of liquid hydrocarbons in Lake Erie.
- RESPONSE: The description of Article 23 under Policy 29 has been revised to reflect this prohibition.
12. COMMENT: The DEIS gives the impression that DEC has decided to proceed with the natural gas leasing program for the lands under Lake Erie. This decision has not been made.
- RESPONSE: The explanation under Policy 29 has been revised accordingly.
13. COMMENT: On page 266 the reference to the Public Service Commission on the discussion on Article 23, Section 23-0305 of the ECL is incorrect.
- RESPONSE: This reference has been deleted.
14. COMMENT: Comments previously submitted by DEC on the water resources issues section suggested that water quality as well as other water resources concerns should be discussed.
- RESPONSE: The water resources section has been expanded to include a discussion on water supply and drought conditions. Other water resource related concerns raised by DEC are discussed under the flooding and erosion issues section.
15. COMMENT: The DEIS should contain more detail relative to the surveillance and cleanup program for oil and other hazardous substance spills which is discussed on page 11-5-46.

RESPONSE: There is considerable discussion of New York State's existing programs on this subject under Policies 18 and 36. Further information is provided in Appendix F, Volume 2. The comment on page 11-5-46 suggests, however, that possibly more could be done under the current authority of State agencies. Through the Coastal Energy Impact Program, the Department of State has funded the preparation of oil spill prevention programs for the eastern end of Lake Ontario and the St. Lawrence River. Similar programs were also developed for all the inlet areas along the southern coast of Long Island. These plans should supplement current State agencies' efforts.

16. COMMENT: The policy on water-dependent uses should be more specific as to how the siting of such uses is determined.

RESPONSE: As stated in the explanation of that policy such uses are to be sited at appropriate locations along the waterfront. Guidelines are provided to assist decision-makers in determining the type of use and the actual site. The decision to approve an action rests with the appropriate State agency subject to the consistency requirements of Article 42, Section 919(1). This process is explained further under Policy 2 and in Section 4 of the DEIS.

17. COMMENT: The statement on page 123 that the mining of sand and gravel is a water dependent use that should be facilitated in the coastal area is not consistent with Part 505 of the proposed erosion regulations which would limit this activity in coastal erosion hazard areas.

RESPONSE: This policy applies generally throughout New York State's coast. If an activity, use, etc. is specifically prohibited or otherwise limited by existing State law and regulations, that activity cannot take place or, if applicable, must be modified to meet the State's requirements. This condition is contained in Article 42, Section 919(1) and in DOS' Part 600 regulations. Therefore, the inconsistency cited does not exist, and the erosion regulations will limit excavation in coastal erosion hazard areas.

18. COMMENT: Several minor wording changes should be made to the explanation of Policy 11 and the discussions on various State means to implement the policy.

RESPONSE: The suggested wording changes have been made.

19. COMMENT: Statement on page 178 Section B.3 is incorrect. State becomes involved only when local regulation is not accomplished.

RESPONSE: The discussion under this section references another section under Policy 11 where this distinction is clearly made. No change is necessary.

20. COMMENT: The discussions under Policy 27 and in the energy planning process section do not address the federal OCS oil and gas leasing activities, nor the State's policies in reviewing them.

RESPONSE: Policy 29 specifically addressed Federal OCS oil and gas leasing activities. The text in the energy planning process has been modified to take into account such activities.

21. COMMENT: The Federal consistency procedures applicable to OCS gas and oil activities do not reflect the Department of Environmental Conservation's major role in this subject area. DEC is the State's lead agency for OCS matters, and it was understood that the Department would coordinate all OCS reviews.

RESPONSE: Federal regulations, pertaining to the consistency of Federal agencies' actions with a State's coastal management program, require that the State designate one agency which would be responsible for coordinating the review procedure in the State and rendering the consistency determinations. This requirement prevents the sharing of that lead responsibility. As a result the Department of State must, as the designated agency, make such determinations. However, the Department is fully aware of DEC's role and responsibility on OCS matters and will consult with DEC on all OCS matters which are subject to a consistency determination. The discussion on this subject in the CMP DEIS has been modified to reflect this consultation process.

22. COMMENT: The CMP DEIS should identify the method for integrating implementing regulations with the NEPA process.

RESPONSE: The U.S. Department of Commerce consistency regulations urge Federal agencies to utilize the NEPA review process, whenever possible, to satisfy their obligations under these regulations. The CMP DEIS reinforced this recommended approach, for many documents produced under NEPA requirements will be used by the Department of State in concurring or objecting to the consistency determination of a Federal action affecting New York State's coastal area.

23. COMMENT: There is a need to identify and address the impacts of the coastal management program on individual projects approved through DEC's Construction Grants Program.

RESPONSE: Once the State CMP is approved, these projects must be consistent with the coastal policies.

Joseph P. Fraioli
Village Manager
Village of Mamaroneck
Mamaroneck, New York

1. COMMENT: The Village of Mamaroneck states that it has created a permanent Coastal Zone Management Committee and urges Federal approval of the N.Y.S. Coastal Management Program so that the Village can complete preparation of, and implement, a local Coastal Zone Management Program.

RESPONSE: Thank you for your support. No further response needed.

G. Edith A. Mesik
Planning Director
Columbia County Planning Department
Hudson, New York

COMMENT: The Columbia County Planning Department states that the New York State Coastal Management Program would have many positive benefits for Columbia County, that the program goals are comprehensive, balanced and realistic, and that the program will protect and enhance the role of local communities in meeting coastal program goals through the preparation of a local waterfront revitalization plan. The Department recommends favorable review and approval of the program by the Office of Coastal Zone Management.

RESPONSE: Thank you for your support. No further response needed.

H. Frances F. Dunwell
Scenic Hudson, Inc.
Poughkeepsie, New York

- 1 COMMENT: The erosion policies contained in Section 600.5 of the Department of State's regulations, which advocate the use of non-structural measures to mitigate property damages resulting from erosion, are not appropriate for the Hudson River shoreline. Recreational and other activities along the River require structural protection for erosion caused by ice and the wakes of passing ships. The policies are more appropriate for the Great Lakes and marine coasts. The prohibition for using public funds in the construction of such protective structures will eliminate the provision of access areas and boating activities.

RESPONSE: The erosion policies referred to in Section 600.5 do not preclude the use and construction of protective structures in any portion of New York State's coastal area. The use of public funds is indeed limited, but it does not prevent structural approaches, specifically in instances where human life, new water dependent uses and existing development would be protected. Therefore, the erosion policies are appropriate for all of New York's coastal area, including the conditions which prevail along the Hudson River shoreline.

I. Samuel H. Sage
Executive Director
Sierra Club - Atlantic Chapter

1. COMMENT: The Department of State is not a natural resources protection agency and has no programmatic interest in the CMP. The Department of Environmental Conservation should be the lead agency or possibly a new, independent agency patterned after the Adirondack Park Agency.

RESPONSE: Refer to the Response to Comment III, E, 12.

2. COMMENT: The Sierra Club is disappointed by the proposed Program and views it as a veiled raid on the Federal treasury coming up with a barely acceptable program at the last hour in order to qualify for Federal funds. Federal approval should be granted since it will provide for some limited interagency coordination and planning for coastal resources.

RESPONSE: No response required.

3. COMMENT: The underlying weak legislation behind this program can be strengthened by the yet to be elected Legislature in 1983. The Sierra Club hopes that Federal approval will be contingent upon a good faith effort towards such amendments.

RESPONSE: Federal approval is based on the adequacy of existing enforceable State authorities.

- 4 COMMENT: There has been almost no public participation and the Program document contains no recommendations that lead us to believe that the situation will get any better.

RESPONSE: Since 1975, when the State first began to prepare the CMP, over 1,000 meetings have been held by Department of State staff with local elected officials, environmental and development interests, civic groups, and others displaying an interest in providing positive and useful advice and the facts to be incorporated in the Program. In addition, the League of Women Voters, through its Speakers Bureau, conducted numerous meetings concerning this program throughout the State.

Three series of formal public hearings have been held in as many years. One series was conducted by the State Legislature. Two series of informal public meetings have also been held throughout the State, the last being conducted in May/June, 1982. The Department of State has also utilized the advice provided by the State Coastal Management Citizens Advisory Committee, formed in 1977. Many ad hoc advisory committees have also provided valuable information used in this program.

For the future, each local government desiring to prepare a waterfront revitalization program will be required to demonstrate it has reached a consensus as to the future of its waterfront, among the users, regulators, and those affected by the activities occurring in the coastal area. This will obviously require extensive public involvement.

5. COMMENT: The coastal boundary is inadequate and non-uniform, thus limiting protection of shorelines. The boundary should be set with objective natural resources criteria and not be based on administrative convenience.

RESPONSE: The coastal boundary was delineated based on criteria which included natural resource considerations among others. The following criteria were used: (1) utilize a one-tier boundary; (2) conform with the nearest cultural feature or political boundary; (3) include all land and water uses directly impacting coastal waters; (4) include any specially designated management areas; (5) include tidal and saline waters, wetlands, islands and beaches; (6) exclude present federally controlled lands; (7) provide buffer areas, where appropriate; (8) coordinate boundary lines with those of adjacent states; and (9) incorporate, to the greatest extent possible, local agency recommendations. In addition, the following special concerns, which include natural resource considerations, were recognized in the final landward boundary delineation: agricultural lands; viewsheds; power plant sites; historic sites; industrial areas; 100 year flood line; and coastal recreation areas.

Administrative convenience in establishing a coastal boundary is a Program requirement (15 CFR 923.31), i.e. the coastal boundary should be clear and exact enough to permit determination of whether property or an activity is located within the boundary.

- 6 COMMENT: The inadequate number and protection of GAPCs has been made moot by their elimination from the Program. Provision must be made for protecting critical resource areas and the Program does little in this regard.

RESPONSE: Special Management Areas (SMAs) is the term used in the CMP, not Geographic Areas of Particular Concern (GAPCs). Refer to PART II, Section 8 for a thorough discussion of the Program's Special Management Areas. Substantial provision is made for the protection of critical resource areas throughout the coastal areas. Refer to Policies 4, 7, 8, 12, 23, 24, 26, 27, 28, 31, 32, 33, 40, 41, 42, 43, 44.

7. COMMENT: The proposed amendments to SEQR regulations will not require adequate consideration of impacts of proposed projects on the coastal zone.

RESPONSE: In addition to the considerations required to be analyzed in SEQR as it stands without the proposed amendments, the proposed amendments will require consideration of all the coastal policies listed in the proposed NYCRR, Title 19, Part 600, Section 600.5.

8. COMMENT: The regulations should not be limited to actions by State agencies.

RESPONSE: Refer to the Response to Comment III, C, 1.

9. COMMENT: SEQR requires review and coordination and is not a regulatory cut with findings that are binding on anyone.

RESPONSE: SEQR not only requires full disclosure of environmental impacts but also requires written findings that (a) the action to be taken is the one among the reasonable alternatives which minimizes or avoids adverse environmental efforts to the maximum extent practicable, and (b) to the maximum extent practicable minimizes and avoids those adverse environmental efforts revealed in the EIS. In addition, the amendments proposed for SEQR (617.9(c)(3)) will require consistency with the Part 600, Section 600.5 coastal policies.

The findings just referred to have been interpreted as providing authority for agencies to condition or deny permits in order to address factors disclosed in an EIS. Miracle Mile Associates, v. DEC, 430 F. Supp. 2nd 440, July 10, 1980. Those factors will not include the coastal policies. See amendments to Part 617, Section 617.14(f)(10).

J. Sarah L. Johnston
Hudson River Sloop Clearwater, Inc.

1. COMMENT: Clearwater has been involved for over a decade in extensive public environmental education and Hudson Riverfront recreation activities. The Clearwater has helped set up a fishery resources management program for the Hudson, and has been involved with dredging issues, pesticide problems and water quality standards. The Clearwater strongly endorses and supports implementation of a coastal program for New York State.

RESPONSE: Thank you for your support.

- 2 COMMENT: The CMP regulatory framework lacks a system for determining priorities among the forty-four coastal policies as well as any method for weighing the costs to coastal resources vs. the benefits of a particular project. Some system of conflict resolution should be included.

RESPONSE: Refer to the Response to Comment III, K, 5.

- 3 COMMENT: Regulations requiring State agencies to fill out coastal assessment forms (CAF) should be expanded to include a required notification process of a proposed action.

RESPONSE: A required notification process for proposed actions is provided for in every instance where any one of the questions on a CAF is answered "yes". DOS Part 600, Section 600.4 requires that a copy of that CAF, with a brief and precise description of the nature and extent of the actions, be forwarded to the Secretary of State.

4. COMMENT: The regulations which set forth requirements for certification of a project [19 NYCRR Part 600.4(2)(3)] should be changed to allow certification of a non-significant environmental impact only if more than one coastal policy is to be advanced (rather than conformance with only one policy).

RESPONSE: The necessity to advance one or more of the coastal policies is only part of the requirements for certification. Before undertaking an action, the State agency must certify that the proposed action will not substantially hinder the achievement of any (emphasis added) of the coastal policies and (emphasis added) advance one or more of such policies. Further if the action will substantially hinder the achievement of any policy, four additional requirements must be met.

K. Bryan Luftglass
Sierra Club, Westchester-Putnam Group

- 1 COMMENT: In Section 2 "Coastal Regions of New York" there is no mention or coverage of Westchester County's Long Island Sound Coastline.

RESPONSE: Although that subregion is not specifically discussed in Section 2, the coastal issues and circumstances of this area were a determinant of the final program. The report "Hudson Valley Regional Element", including Westchester County's Long Island Sound Coastline, contains a discussion of the coastal issues of this area and was a major contribution to the final program.

2. COMMENT: It is imperative that as much coastal property as possible as rapidly as possible be set aside to preserve unique environments.

RESPONSE: The Coastal Management Program recognizes the importance of preserving unique environments. Federal funds which may be allocated to the program may not be used for such acquisition. The CMP will actively seek programming of other funds to preserve such areas. Current DOS participation on the Hudson River Estuarine Sanctuary Program reflects such an effort.

3. COMMENT: The Agricultural runoff of pesticides as a source of toxic pollutants should be noted in the issue discussion on fish and wildlife

RESPONSE: Agree, the text will be revised.

4. COMMENT: While the discovery of oil under Lake Erie is unlikely, the potential for longer term damage from condensates associated with natural gas should be investigated.

RESPONSE: Article 23 of the NYS Environmental Conservation Law prohibits production of liquid hydrocarbons in Lake Erie either alone or in association with natural gas. Therefore, any wells encountering appreciable amounts of oil on natural gas condensate must be plugged and abandoned immediately.

5. COMMENT: While the tidal range in the Great Lakes-St. Lawrence area may be relatively small, these bodies of water are subject to tidal movements.

RESPONSE: The mean range of true tides on the Great Lakes is .03 meters, This is relatively small.

6. COMMENT: On page 23 it is mentioned that "14,130 cubic feet of debris ente the Hudson River annually". Do these statements imply that the difference (585,870 cubic feet) enters the Harbor annually, or are these statements inconsistent?

RESPONSE: It is estimated that 600,000 cubic feet enters the New York Harbor annually.

William E. Miller
United Mobile Sportsfishermen, Inc.

1. COMMENT: Maps showing coastal boundaries should have been provided with the DEIS.

RESPONSE: Maps showing the statewide coastal boundary for each coastal county, city, town, and village have been filed with the clerk of each jurisdiction and are available for inspection. The cost of printing and including a coastal boundary map with the DEIS would have been prohibitive.

2. COMMENT: Spawning and nursery areas in the Hudson River for striped bass, in Long Island's Great South Bay for weakfish, and in other areas for important species should be shown on the coastal area map.

RESPONSE: Where these spawning and nursery areas meet the criteria for the identification as "significant fish and wildlife habitats", which should be the case in most of the above-cited instances, they will be shown on the coastal area map and a narrative prepared detailing information on that particular habitat.

3. COMMENT: Policy 9 for recreational use of fish and wildlife resources seems too oriented to freshwater and cities. It may need to be supplemented to cover saltwater access.

RESPONSE: There was no intention to exclude or diminish the importance of recreational fishing in the marine waters of the coast. To emphasize its equal importance, a phrase to the effect has been added to the explanation of the policy.

4. COMMENT: Policy 19, dealing with public access to public water-related resources and facilities, may discriminate against suburban and non-urban areas because of guideline A(4) dealing with State agency plans and programs for increasing public access and their priorities for particular areas.

RESPONSE: In developing the State CMP, the DOS discovered that the most severe access deficiencies occur in urban areas. The guidelines for implementing the access policy recognizes this situation by emphasizing the need to give a higher priority for access projects in urban areas at the present time. Over time, as projects are completed to increase access in urban areas, the priority can change.

5. COMMENT: Existing ORU access routes in the coastal zone to the beach and along the beach should be mapped in order that they are recognized and protected.

RESPONSE: In the first year of the "306" CMP, all existing coastal public access will be located, mapped, and described in terms of mode, capacity, and condition. This will be the basis for a second year analytical phase to determine where and what kinds of increased access are desirable.

6. COMMENT: Policy 21, dealing with water dependent and water enhanced recreation, should specify that, all other things being equal, water dependent should be favored over water enhanced recreation.

RESPONSE: Agreed. A sentence will be added in the explanation of the policy to reflect this change.

7. COMMENT: With respect to utility transmission facility siting, it is suggested that recreational vehicle trail use (for trail bikes, 4-wheel drive vehicles, and snowmobiles) also be considered a suitable recreational activity.

RESPONSE: Agreed.

8. COMMENT: In Section 600.2 of the Draft DOS Part 600 regulations, the definition of "Actions" is too narrow by including only SEQR Type I or unlisted actions.

RESPONSE: The definition of "Actions" was developed in response to the need both to keep the burden of review on State agencies at a reasonable level and at the same time ensure that all significant actions are covered. The DOS believes that the current definition meets both requirements.

NOTE: The following comments address the Draft Part 500 Regulations

9. COMMENT: Where non-movable structures are to be placed in a structural erosion hazard area, Section 505.7(b) would require construction of erosion protection structures which can act as a barrier to lateral access along the shore. This Section should be deleted because this requirement will adversely affect CMP access objectives (in spite of regulations against such effects). Only setback requirements should be applied and, in our view, structure loss is preferable to public access loss. Section 505.7(b) should be deleted.

RESPONSE: The Part 505 Regulations are derived from "The Shoreowner's Protection Act", Article 34, ECL, which deals solely with erosion hazards. The Act sets rigorous standards for the use of erosion protection structures including: a requirement that there will be no measurable increase in erosion to the site or at other locations; and that adverse effects to natural protective features and natural resources must be minimized.

- 10 COMMENT: Section 505.8(c)(7) requiring vehicle travel seaward of the upper debris line or, when absent, the toe of the dune, and for no travel on vegetation, are all proper and supported.

RESPONSE: No response required.

- 1 COMMENT: Section 505.8(c)(8) is highly irregular and is condemned. Local governments always have the authority to regulate uses and do not need DEC permission. This program reveals a bias against our use that is not similarly shown for other inherently more destructive uses and thus selectively waives application of standards in only this particular instance. It is vehemently rejected and DOS and OCZM are urged to require its deletion.

RESPONSE: Provision deleted.

- 12 COMMENT: Again, a selective bias against motor vehicles is evident in Section 505.8(c)(9) which states that "Nothing in this Part authorizes trespass of motor vehicles on private lands". Does this mean that trespass by hikers, walkers and boaters is authorized? All trespass is covered under existing law regardless of mode, and is a ridiculous provision on its face and should be deleted.

RESPONSE: Provision deleted.

- 13 COMMENT: Section 505.8(d)(2) - prohibition of vehicular traffic on bluff faces is proper and supported.

RESPONSE: No response necessary.

14. COMMENT: Permit requirements for pedestrian dune crossings will inhibit their use and is regulatory overkill. Elevated walkways/stairways may not be the only viable technique. There is always the alternate option of periodically restoring the dune elevation.

RESPONSE: Ill-planned and poorly constructed pedestrian walkways and stairways can cause substantial damage to the fragile primary dunes, interfere with their dynamics and thus reduce their natural protective character which is recognized in "The Shoreowner's Protection Act." The Department of Environmental Conservation hopes that the permit requirement will be a benefit to applicants by providing technical assistance on the proper construction and design of such walkways.

- 15 COMMENT: Section 505.7(b) does not address the fact that erosion protection structures frequently impair public access to or along the coast. Bulkheading and backfilling with fill taken from the water side of the bulkhead often results in public movement along the shore being blocked by private property on the landward side of the bulkhead and by water on the waterside. At a minimum, mandatory public easements across such property should be required as a condition for permit approval, with appropriate structure design to permit such movement.

RESPONSE: See also the Response to Comment 9. above. "The Shoreowner's Protection Act" contains no provisions for such conditioning of permits in erosion hazard areas. However, see particularly CMP policies 9, 19 and 20 regarding public access to coastal resources. The inclusion of public access over such structures is encouraged.

16. COMMENT: Section 505.8(e)(5) - the prohibition of vehicular traffic on primary dunes is supported in concept but it should be modified to prohibit traffic dunes "except across designated vehicular dune crossings" to allow access and egress from the beach.

RESPONSE: See revision, suggestion incorporated

M. Bernard J. Blum
Friends of Rockaway, Inc.

COMMENT: There is general dissatisfaction with the manner by which the Jamaica Bay/Rockaway area has been treated by the New York City Planning Commission's CMP. Numerous detailed deficiencies are cited. A principal recommendation is made to the establishment of a Task Force made up of representatives of the community and agencies with jurisdiction in the area. The Task Force would be responsible for setting goals for economic and recreational development conservation, and erosion control.

RESPONSE: The NYC WRP deals with procedures to be utilized to manage the NYC coastal area. Specific projects for particular areas of the City, such as the Jamaica Bay/Rockaway area, will receive special attention upon implementation of the WRP. Public participation in these activities will be achieved through the community board, and other mechanisms as appropriate.

2. COMMENT: There is no policy for preventing environmental degradation by private interests in the form of excessive rates of erosion.

RESPONSE: Policies 13 and 14 are focused on preventing the construction or reconstruction of erosion protection structures if they adversely affect adjacent shorelines. New York City policies E and G add specificity to these policies and apply to both public and private actions. In addition, the Department of City Planning will be developing an erosion hazard area ordinance which will be in conformance with the State's Environmental Conservation Law, Article 34. This law provides for minimum standards and criteria to regulate activities and developments, including the placement of erosion protection structures so there will be no measurable increase in erosion to the development site or elsewhere.

3. COMMENT: Numerous structural solutions are presented for erosion and marine life problems occurring along the Rockaway beaches.

RESPONSE: It is not feasible to comment here on the validity of proposed structural solutions to specific erosion or marine life problems. Any proposals, of course, must be consistent with the policies of the approved NYC WRP and must be in accord with New York City's erosion hazard area ordinance, when approved.

4. COMMENT: The Arverne-Edgemere Urban Renewal Area is a violation of state revitalization and access policies.

RESPONSE: Though this specific project may not be consistent with the coastal policies, the NYS CMP and NYC WRP are not approved. Once approved, all proposed actions in the coastal area must be consistent with coastal policies.

N. Frank R. Seddio
District Manager
Community Board No 18
Brooklyn, New York

- 1 COMMENT: Community Board No. 18 requests a special management area for the hydrological areas of Jamaica Bay which would upgrade the environmental quality of the Bay and preserve the unique characteristics and relate to the upgrading of the water quality.

RESPONSE:

The New York City WRP includes the periphery of Jamaica Bay within its boundary. However, Jamaica Bay, itself, is a federally owned property and is part of the Gateway N.R.A. As such, it is excluded from the State's, and thus, the City's coastal area. The management of this water body is the responsibility of the National Park Service.

2. COMMENT: The Board requests pollution control in Paerdegat Basin.

RESPONSE: The New York City proposed waterfront revitalization program contains several policies dealing with water quality and describes what steps the City will take to coordinate water pollution control activities with protection of natural coastal resources. The City's program supports the implementation of a Paendegat Basin tributary study which is designed to address the specific problems of the basin.

3. COMMENT: Illegal dumping is a problem. The Board would support a solid waste policy which would remove solid waste pollution and illegal dumping and which would have prevention and enforcement provisions.

RESPONSE: The proposed New York City WRP contains measures and city means for implementation of policies on solid waste dumping (cf. NYC policies J and K).

O. Nancy Nagle Kelly
Planner
Group for the South Fork, Inc.

COMMENT: Group for the South Fork Inc. commends the efforts of the State to date in developing a comprehensive management program for coastal land and water use activities. While some aspects of the plan need further work and clarification, the framework has been laid for an effective program.

RESPONSE: Thank you for your support. No further response needed.

NOTE: The following comments refer to the draft DEC Part 500 regulations on the Coastal Erosion Hazards Areas Program.

2. COMMENT: Section 505.7(b) seems to promote the use of erosion control structures. A great deal of evidence exists that so-called erosion protection devices are frequently improperly placed, do not serve their intended purpose, and that groins in particular area of limited are unknown value in preventative erosion and hurricane damage and cause scouring of the beach front thus increasing erosion.

RESPONSE: The intent of the regulations is not to promote structural protection. Such protection could only be built if the requirements of Section 505.9 were met. However, the prominent placement of Section 505.7(b) before the requirements for movable structures contained in Section 505.7(c) may create the impression of preference. To avoid this the final regulations will have the order of the two reversed. Note also that the introduction to 505.9 restates the findings of "The Shoreowner's Protection Act" regarding the problems associated with the use of structural protection measures.

3. COMMENT: In its report, A Coastal Erosion Subplan for Nassau and Suffolk Counties, the Long Island Regional Planning Board states that coastal erosion plans should be designed to promote "the continuation of natural geomorphic processes responsible for the maintenance of coastal landforms." The report emphasizes non-structural solutions to erosion control problems and discourages projects that block the transport of sand.

RESPONSE: The cited report (which was prepared for the NYS Department of State and financially aided by the Federal Office of Coastal Zone Management) was used extensively in the development of the Coastal Management Program and in drafting the "The Shoreowner's Protection Act". However, in passing the Act, the State Legislature elected to allow greater discretion to property owners in choosing among the array of alternatives available, for the appropriate method to deal with erosion hazards. Nevertheless, as noted in the response above, the Legislature also prescribed rigorous standards where structural measures are employed. You should also be cognizant of the Coastal Management Program Policy 17 which requires the use of non-structural measures whenever possible.

4. COMMENT: Section 505.8(c)(5) exempts the construction, modification, or restoration of structures less than a certain size and/or of a temporary nature. This may prove detrimental in certain sensitive beach areas.

RESPONSE: Provision deleted

5. COMMENT: The protection of barrier islands, spits, and bay barriers would be greatly aided by the Federal Barrier Islands Bill pending in Congress.

RESPONSE: No response necessary

6. COMMENT: What persons or agencies will be responsible for enforcing and monitoring Section 505.9(c), (d) and (e)?

RESPONSE: The Part 500 regulations serve two purposes: provide minimum standards which must be met by local coastal erosion management programs; and, by the Department when it regulates a coastal erosion management program. In the latter case the Department's Regional Permit Agents would administer the regulations. In the former, each municipality or county must determine how it will administer its local program. See Sections 34-0105, 34,-0106 and 34-0107 of the Act for the conditions determining the implementing unit of government.

7. COMMENT: We question whether the Section 505.10(b) proposed setbacks for movable structures within hazard areas is adequate.

RESPONSE: The setback distances were established with regard for all factors

8. COMMENT:

In Section 505.10(c), the setback requirements for non-movable structures protected by erosion control devices need clarification.

- . What are the setback requirements for non-movable structures not protected by approved erosion protection structures?

RESPONSE:

The setback requirements for non-movable structures will vary with the effectiveness of the erosion protection structures protecting the site. That calculation will be made on a case-by-case basis.

- . New non-movable structures or major additions to existing structures are not allowed in a structural hazard zone unprotected by an approved erosion protection structure. Refer to Section 505.7(b).

9. COMMENT: As mentioned earlier, we are somewhat sceptical of the effectiveness of erosion protection structures (505.9(b)). A great deal of controversy exists as to whether such devices have demonstrated success in controlling long-term erosion.

RESPONSE: These regulations are meant to govern activities throughout the coastal waters of New York, including the Hudson estuary and the Great Lakes. Structural solutions in these areas are more feasible than on the south shore of Long Island. The regulations have been written as performance standards to enable the use of criteria specific to the site in question when reviewing plans for structural controls.

P. Howard Golden
President of the Borough of Brooklyn
The City of New York

- 1 COMMENT: The New York State Coastal Management Program provides an innovative approach to public waterfront policy, in that, the review process is equally and separately implemented at the state and local levels. This is particularly evident in the application, a major portion of which is New York City's own management program. Although the local program differs from that of the state's through the added inclusion of land use review procedures, the two programs are integrally linked under the environmental review process.

RESPONSE: No response necessary

2. COMMENT: The interrelationship of the State and City environmental quality review processes will determine whether the State CMP can be deemed adequate. It is imperative to note that a separate and identifiable local process is required under the proposed NYCWRP to implement the State CMP.

RESPONSE: The adequacy and approvability of the State's CMP and the City's WRP is based upon the enforceability of their respective laws, regulations and associated processes. SEQR is only one of the processes that will be utilized by both governments. When this process is used by the City, the departments of City Planning and Environmental Protection will serve as co-lead agencies in accordance with Executive Order No. 91. If an action involves both City and State agencies, the lead agency is determined by the procedures contained in E.O. No. 91 and Sections 617.6 and 617.7 of SEQR. When an action is subject to both ULURP and SEQR, the City's designated agencies will, in most instances, be the lead agencies for SEQR purposes. In either situation, the decisions of involved State agencies must be consistent with the policies of the State's CMP and the City's WRP, as required by Article 42 of the Executive Law.

3. COMMENT: The costs of implementing this local environmental mechanism and coastal management policies makes it crucial that the State plan provide a work program and funding commitments which meet the needs of our local efforts. Although this commitment is not required under the Federal application process, it is necessary in evaluating the benefits to be derived from the City's continued participation in the program and its relationship to the State's environmental process. Certainly, the City's withdrawal from or disapproval of the program could only lead to delaying this application (an identified alternative in the Draft EIS).

RESPONSE: As stated in the comment, the preparation of a work program is not a requirement for approval of either the NYS CMP or the NYC WRP. Further, as of this writing, Congress has not yet appropriated sufficient funds for the State CMP. Therefore, even if required, a commitment of funds would be impossible to make. The Program document and EIS being considered for Federal and State approval does not contain the reference to the alternative identified in the above comment. For your information, withdrawal from, or disapproval of the NYC WRP, would not affect the schedule or status of the NYS CMP or its application for financial assistance.

4. COMMENT: These comments, as well as my original testimony, are not critical of the Coastal Management Program as proposed. In fact, I am supportive of the potential benefits derived from New York City's cooperative efforts and comprehensive submission.

RESPONSE: Thank you for your support. No further response needed

- 5 COMMENT: In order to insure an adequate response to five years of planning, it is essential that I understand whether a proper allocation of resources is associated with this program.

RESPONSE: Approval or denial of approval of the NYS CMP and/or the NYC WRP is not contingent on the availability of funds. As stated above, as of this writing, Congress has yet to appropriate these funds. Further, the primary benefit of this program, as explained in the Alternatives and other sections of the document is not the funds which relate directly to the Programs, but the consistency provisions of the Federal Coastal Zone Management Act and the State's Waterfront Revitalization and Coastal Resources Act. The first Act, requires Federal activities to be consistent with State policy. The second, requires State agencies to be consistent with those same policies, as well as identified actions of approved local WRPs. These provisions, plus others will for the first time require all activities -- Federal, State and local -- within the coastal area, to accomplish the State policies for waterfront revitalization and coastal resources protection, without conflict or redundancy.

Q. Hilda Regier, Rose Mary Lynch
Community Board No. 4
New York, New York

1. COMMENT: The Draft Environmental Impact Statement of the State of New York Coastal Zone Management Program does not address the revitalization problems of the Waterfront of the west side of Manhattan and the specific needs of Community Board No. 4 in relation to the waterfront, i.e., shipping and possible recreation spots. This report should be expanded to include the revitalization problems of the waterfront as mentioned above. The waterfront within the Board No. 4 area should be designated as a special revitalization area.

RESPONSE: The DEIS and NYS CMP address the principal issues facing the entire coastal area of the State. These issues fall into three categories: the need to wisely develop coastal resources; the need to protect coastal resources; and the major activities which will occur in the coastal area and which affect numerous coastal resources. The State CMP includes the regulatory framework within which these issues are addressed. The NYC WRP provides specificity to the State policies designed to address those three major categories of issues. These more detailed conditions placed on the broader State policies are implemented by State authority as well as existing City regulatory measures. Specific problems of any particular coastal area of the State, including the west side of Manhattan will be addressed within this regulatory framework upon approval of both the NYS CMP and the NYC WRP.

The west side of Manhattan has already been designated as an Area of Particular Waterfront Significance in order to address specified problems related to that stretch of the shorefront. The area extends from the Battery to 72nd Street.

R John W. Meunzinger
Westchester County Department of Planning

- 1 COMMENT: DOS regulations Part 601.4 should be changed from requiring the sending of a copy of LWRP to "the county wherein the LWRP area is situated" to requiring sending a copy to the county planning board on agency.

RESPONSE: Each county can make its own arrangements for internal distribution and review.

- 2 COMMENT: The proposed amendments to SEQR do not relate well to the existing language and format of Part 617 and should be revised. For example, adding the provision of consistency of State actions within the coastal area to Section 617.9(c)(3) does not give the attention needed to this major element of the program. The thought also does not seem to relate to this paragraph to which it is being added.

RESPONSE: Section 617.9 is the most appropriate location in the SEQR regulations for the addition of the consistency determinations required by Article 42. That section requires the findings for the State Environmental Quality Review Act. Without altering the existing SEQR process, the proposed amendments will assure that the coastal policies will receive the consideration required by Article 42 and necessary for the achievement of the policies and purposes of New York's coastal program.

- 3 COMMENT: The language is not totally clear in Section 617.14(f) (10), but the intent is obvious. A key word appears to be missing ... "The identification and discussion shall instead be of the potential affect, if any, on the applicable policies and purposes of such an approved local waterfront revitalization program."

RESPONSE: We agree See revisions to Section 617.14(f)(10).

4. COMMENT: Language should be added to Part 601 and the Local Government Guidelines to strongly encourage consultation with adjacent communities during the development of a local waterfront revitalization program.

RESPONSE: Agreed. Appropriate language has been added

5. COMMENT: Article 42 should be amended or sufficient language should be included in Part 601 and in the Local Government Guidelines to provide for a review of the consistency between county policy and a local waterfront revitalization program before it is approved by the Department of State.

RESPONSE: See Response to Comment III, A, 2.

6. COMMENT: There should be a provision for the development of County coastal plans for areas of the coastal zone under direct County jurisdiction and management.

RESPONSE: Article 42 provides for the development of a local waterfront revitalization program by cities, towns, and villages. Their legal jurisdictions cover all areas within the CMP boundary, even though counties and other governmental entities may own, lease, or administer property within the boundary of a local government. The Department of State regulations (Section 601.4(3)) do provide counties the opportunity to review and comment on proposed local waterfront revitalization programs prior to approval by the Secretary of State. However, giving an option to allow a county to prepare a WRP would be contrary to Article 42.

S. Thomas La Manna
Community Board No. 1
Staten Island, New York

1. COMMENT: Criteria should be established to ascertain priorities when conflicts arise between different proposed waterfront policies, activities, and uses. For example, while the program places emphasis on economic revitalization and port development, it does not suggest when that use should or should not supersede other coastal uses.

RESPONSE: See Response to Comment III, K, 5

2. COMMENT: The Staten Island waterfront from the St. George Ferry Terminal to the Pouch Terminal is requested to be included as a shorefront Access Area; the region including the Arthur Kill, Kill Van Kull and adjoining wetlands is requested to be included as an Area of Particular Waterfront Significance and that a Task Force of agency representatives, community groups, and environmentalists be established.

RESPONSE: Refer to Response to Comment III, M, 3.

3. COMMENT: The CMP does not include a work program for carrying out the policies it presents.

RESPONSE: Section 4 of the CMP DEIS discusses detailed program management activities that are required to implement coastal policies. In addition to these detailed activities, annual work programs will be prepared by the Department of State and communities with approved local waterfront revitalization programs. See Part II, Section 10 for an overview of the first year of program implementation.

T. Daniel J. Palm, Ph.D
Executive Director
St. Lawrence-Eastern Ontario Commission

1. COMMENT: Pages 47-52 -- This section could be strengthened by reference to Chapter 701, Article 37 of the Executive Law that established the St. Lawrence-Eastern Ontario Commission.

RESPONSE: Agreed. See revision.

2. COMMENT: Page 114, Section 6, Coastal Policies and Implementation would be strengthened by referring to Chapter 701, Article 37, Paragraph 847-g, (Project Review). For example, this legislation specifically addresses policies 23, 24 and 25.

RESPONSE: The purpose of this Section of the document is to state, and explain coastal policies and describe the means for their implementation throughout the State's coastal area. The referenced State law applies only to the SLEOC service area, and therefore cannot implement policies Statewide.

3. COMMENT: The above 2 items are set forth in a positive sense to reflect that during the past 12 years New York State has implemented coastal resource management along the eastern end of Lake Ontario and along the St. Lawrence River through the Commission.

RESPONSE: Agreed. The Commission has also had a major role in the development of this Program.

4. COMMENT: The Commission is fully supportive of the program set forth in the DEIS under review. It further hopes that review and approval will be timely.

RESPONSE: Thank you for your support. No further response needed.

U. Bonnie June Mellon

1. COMMENT: Approval of the DEIS would be in violation of New York's environmental policy to enhance the health, safety and welfare of the people of the State set forth in Article 1 of the Environmental Conservation Law.

RESPONSE: We disagree. The State has certified that the coastal program is consistent with State law. The U.S. Department of Commerce reviews the program for compliance with the Federal Coastal Zone Management Act.

2. COMMENT: The DEIS completely ignores important scientific and oceanographic data revealing hazards to people residing in oceanfront communities on Western Long Island.

RESPONSE: During the development of the Coastal Management Program and preparation of the DEIS, a great number of documents and site-specific studies were reviewed but not all of them were cited in the DEIS.

3. COMMENT: The DEIS omits reference to Article 28, NYS Executive Law.

RESPONSE: See revision, suggestion incorporated. (See Policy 11)

4. COMMENT: Waves have not been added to the storm surge elevation for flood insurance for the City of Long Beach oceanfront which is devoid of sand dunes. Rezoning for new oceanfront high rise residential buildings has been enacted by City of Long Beach officials.

RESPONSE: A wave height analysis is being added to the City's Flood Insurance Study: the amendment was delayed to develop a new topographic base map for the City and it is expected that the draft study will be made available by the Federal Emergency Management Agency in early October, 1982. Zoning is, of course, a local government power, however participation in the federal Flood Insurance Program, including the regulation of activities in flood-prone areas, is required by State law.

SECTION 3

RESPONSE TO TESTIMONY RECEIVED AT
JOINT FEDERAL AND STATE PUBLIC HEARINGS ON DEIS

A. Charlene Caile, representing:

Erie County Executive Edward J. Rutkowski
(Written Testimony Submitted)

- 1 COMMENT: Lake Erie and Niagara River are important to the area for water supply, fishing and swimming purposes. Also, public investment made to improve the quality of these waters requires protection.

RESPONSE: No response necessary

2. COMMENT: The guidelines for the development of local waterfront revitalization programs do not give recognition to county-wide issues or the need to coordinate such local efforts with county plans and programs.

RESPONSE: The guidelines have been modified to direct coastal municipalities to undertake a comprehensive analysis of their entire waterfronts in developing the local programs. This analysis will address both local and areawide concerns as well as considerations of the plans and programs of other governments affecting the waterfronts. The Department of State's regulations (Section 601.4(3)) provide counties the opportunity to review and comment on proposed waterfront revitalization programs prior to approval by the Secretary of State. This review procedure offers counties the chance to raise issues or coordinate concerns that may not have been adequately addressed by a coastal community.

- 3 COMMENT: The guidelines do not clearly indicate whether projects applied for by counties have to be situated in localities with approved waterfront revitalization programs. Such projects should be eligible for funding in coastal communities with or without an approved local program.

RESPONSE: Under the provisions of Article 42 of the Executive Law, only cities, towns and villages would be eligible to receive funding. Plus, any project-related funding must be for "activities which serve to facilitate construction projects provided for in an approved waterfront revitalization program" (Section 918(1)(b) of Article 42, Executive Law). However, should a community elect to so provide, a county could be the recipient of funds on behalf of that community.

B. David Stebbins, representing:

City of Buffalo, Division of Planning
(Written Testimony Submitted)

1. COMMENT: The City of Buffalo strongly supports the NYS Coastal Management Program and urges its approval by the Federal government to insure a successful waterfront revitalization effort in the City. The Program represents a workable and effective approach for balanced management of coastal resources and by using existing authorities will promote the beneficial use and prevent the impairment of those resources.

RESPONSE: Support appreciated, no further response necessary.

C. Frances F. Dunwell, representing:

New York Coastal Coalition
(Comments presented at the public hearing in Albany were contained in written testimony submitted on July 20, 1982. The following comments are from that written testimony)

- 1 COMMENT: The proposed amendments to the SEQR regulations are confined to significant actions by state agencies. These proposed changes are in violation of the intent of Article 42 of the Executive Law and the mandate contained in Section 919(3) of that Article.

RESPONSE: The proposed amendments to the SEQR regulations cover all "Type I" or "Unlisted Actions" as defined in Part 617, Section 617.2, not just significant actions. See proposed Section 617.5(d).

Section 919(3) is contained in the section entitled "Coordination of state actions and programs." (emphasis added) Both subdivisions one and two of Section 919 address state agency actions only. In that context, subdivision three is interpreted to apply only to state agencies. This interpretation is also in accord with the debate in the State Legislature on Article 42.

2. COMMENT: Language, regarding coastal resources, should be added to the list of criteria contained in Section 617.11 which are used in determining the significance of an action under SEQR.

RESPONSE: Coastal resources considerations are incorporated in the determination of significance by the required use of the Coastal Assessment Form (CAF) prior to any determination of significance under SEQR. See Section 600.4 of the proposed Department of State (DOS) Part 600 regulations.

3. COMMENT: Various environmental criteria in the proposed CAF should be incorporated into the Environmental Assessment Form (EAF) contained in the existing SEQR regulations.

RESPONSE: This recommendation would not alleviate the need for the CAF since not all the criteria in the proposed CAF are "environmental" and, therefore, suited for addition to SEQR and its EAF. It would also be inappropriate since the EAF is used by all agencies, state, county and local, and for all actions, both inside and outside the coastal area. The authority of Article 42 -- and thus the CAF -- is limited in scope to state agencies acting in a coastal area.

4. COMMENT: The Type I list in Section 617.12 of the SEQR regulations should be amended to include certain features that are important to the coastal program such as significant fish and wildlife habitats, important agricultural lands and other ecologically sensitive areas.

RESPONSE: The Section 617.12 Type I listing is primarily a catalog of actions likely to impact on the environment because they exceed certain thresholds keyed to either magnitude or location. To add certain actions to that list because of their coastal features alone would alter the nature of the existing listing.

Also, as indicated similarly in other responses, the suggested change would affect local as well as state agencies and without regard to the location of the actions. Article 42's authority extends only to state agencies acting in a coastal area.

5. COMMENT: Language should be added to SEQR, Section 617.9 to clarify that determinations of consistency pursuant to Article 42, reflected in the proposed amendments to DEC Part 617, Section 617.9, do not require the granting of a permit or other approval which would otherwise be denied pursuant to any other state law.

RESPONSE: None of the findings required by Section 617.9 of SEQR require approval of an action which would otherwise be disapproved. SEQR is simply the mechanism for assessing, analyzing and weighing the environmental impact of an action to be taken by an agency in achieving some program objective. It assures minimization or avoidance of adverse environmental impacts of an action to be undertaken by an agency but it does not and cannot authorize or require that an action be taken which an agency could otherwise not take pursuant to the dictates and standards of the program it is implementing.

6. COMMENT: Permits are not subject to a consistency determination unless they are determined to be a significant action and thus subject to an EIS under SEQR. This is a significant loophole in the regulations.

RESPONSE: Article 42 does not contain the authority for subjecting permitting actions of State agencies to the Part 600 regulations unless the action has been identified by the Secretary pursuant to Section 916(1)(a) of Article 42, or is subject to SEQR and has the potential to significantly affect the environment, thus requiring an EIS. The Federal CZMA requires States to manage land uses having direct and significant (emphasis added) impacts on the coastal waters; thus the significance test is not a loophole but is in compliance with the Federal Act, and specifically regulations 23.11(b)(1).

7. COMMENT: The CAF form should be amended to direct that a "yes" answer to any question pertaining to natural resources requires the preparation of a long form EAF. This will link the CAF to SEQR.

RESPONSE: The purpose of the CAF is to assist state agencies in assessing the potential impacts that their actions may have upon the achievement of coastal policies. The CAF is also intended to supplement the EAF in determining the significance of proposed actions. This link to SEQR is accomplished by requiring (in Section 600.4) that the CAF be completed prior to any SEQR determination of significance. This connection has been further clarified by the revisions to Section 600.4.

8. COMMENT: In DOS' Part 600 regulations, no reference is made to nor are there requirements for the use of the explanations and guidelines which accompany the coastal policies in the CMP DEIS.

RESPONSE: Revisions have been made to Section 600.5 which identify, reference and clarify the purpose and use of the explanations and guidelines.

9. COMMENT: Rule-making should not be exempt from the consistency requirement.

RESPONSE: Debate in the Legislature on Article 42 indicated that they did not intend the enactment of a measure which imposed additional general regulatory requirements. In §919(1) of Article 42 the listing of the types of actions directly undertaken by state agencies that must be consistent with coastal policies does not include rule-making actions. Note further, that in situations where the Legislature intended rule-making actions to be covered in other contexts, express inclusion of rule-making is found. See, e.g., Environmental Conservation Law, § 8-0105.

Rule-making actions, nevertheless must be the subject of a Coastal Assessment Form. This form would provide notification to the Secretary and an opportunity for discussion of proposed rule-making actions which may affect coastal issues. Also, those rule-making actions for which an environmental impact statement is prepared pursuant to the SEQR regulations (Part 617) would be the subject of analysis which must include the coastal policies since the amendments to Part 167 require this (see proposed addition to Part 617.14(f)(10)).

10. COMMENT: The words "the preservation of" should precede the words "those natural resources" in the first sentence of Section 600.1(c).

RESPONSE: The language of DOS Part 600, Section 600.1(c) is a restatement of the legislative intent contained in Section 910 of Article 42

11. COMMENT: The policies in Section 600.5 of DOS' Part 600 regulations should be amended and state the need to protect fish and wildlife habitats in general.

RESPONSE: Several existing laws, while their principal intent is not directly focused on habitat protection, already afford considerable protection to fish and wildlife habitats. Some of the more noteworthy laws are the Fresh Water and Tidal Wetlands acts, Protection of Waters Act, State Pollutant Discharge Elimination System and the Solid Wastes Management Act.

12. COMMENT: The policies in Section 600.5 provide no protection to fish and wildlife habitats, except those identified as significant, from adverse impact resulting from toxic chemicals and other pollutants.

RESPONSE: Several policies contained in the CMP/DEIS specifically provide protection to these habitats from the adverse effects of hazardous wastes and other pollutants. Policies numbers 30, and 33-40 address the concern raised, but are not in section 600.5 regulations for they are already a part of other existing State law.

13. COMMENT: Public access to publicly owned lands, which have been acquired to protect fragile natural resources and could be threatened by public access, should not be mandated.

RESPONSE: The explanations and guidelines in the CMP/DEIS for both public access policies give recognition to the harm that may result to fragile resources from overuse. In addition, the second policy specifically states that access be "...provided in a manner compatible with adjoining uses."

14. COMMENT: The proposed DEC Part 505 erosion regulations should be amended to include a schedule for designation of those areas within a year of program approval.

RESPONSE: Deadlines for designation of those areas are contained in Article 34 of the Environmental Conservation Law. NYS CMP funds, which are contingent upon Congressional approval, will be provided to the DEC to ensure that the designation of erosion hazard areas will be expedited. The target date for the completion of the designation process is October of 1983.

15. COMMENT: The DOS' Part 601 regulations should be amended to require that a local government be consistent with its approved waterfront revitalization program.

RESPONSE: Consistency is already required by Section 601.6(b) which authorizes the ultimate sanction or revocation of approval. However, this has been further clarified by revisions to Section 601.6(a).

16. COMMENT: Part 601 of DOS' regulations should provide a notification procedure to alert the Secretary of State of local actions so that he is better able to monitor the progress of each local program.

RESPONSE: We agree. Section 601.4(e) has been revised accordingly.

17. COMMENT: State agencies, with programs that have the potential to affect a local waterfront program, have the opportunity to review and comment on every local program prior to approval by the Secretary of State. How will a negative comment from a state agency on a local program affect approval by the Secretary of State?

RESPONSE: Article 42 requires the Secretary to consult with those state agencies with programs affected by a local program. She/he must disapprove any program, if she/he finds after consultation that there is a conflict with any State or Federal policy. The regulations also require disapproval. See Section 601.3(3).

18. COMMENT: Mention should be made in the CMP document of the means for completing and updating the identification of significant habitats, scenic resources and agricultural lands.

RESPONSE: These important coastal resources will be completed and mapped on the Coastal Area map during the first year following program approval.

19. COMMENT: The economic development policies are overly broad and override certain existing protection for environmental resources.

RESPONSE: Each policy statement must be read together with all of the other policies. The balancing of competing policies, which is so vital to the success of New York's coastal effort and which was recognized as such by the State Legislature in Article 42, Section 912(1), will take place in the course of the SEQR process for those actions for which an EIS is prepared pursuant to DEC's Part 617 regulations, and in Section 600.4 of DOS's Part 600 regulations for all non-significant actions. The process of ascertaining consistency, as required in 600.4 and SEQR will result in decisions which balance all relevant coastal policies. See also revisions p.11-5-54.

- 20 COMMENT: The guidelines applicable to the fish and wildlife policies are totally inadequate and overly restrictive.

RESPONSE: The explanation to the policy on significant fish and wildlife habitats has been expanded to include guidelines on activities likely to affect such habitats and physical, chemical and biological parameters.

D. Bernard Melewski, representing:

Environmental Planning Lobby

- 1 COMMENT: The SEQR, Part 617 regulations should be amended to add coastal considerations to the Section 617.11 criteria which are to be used when making determinations of significance.

RESPONSE: See response to III, C, 2

2. COMMENT: The environmental criteria in the Coastal Assessment Form (CAF) should be incorporated into Environmental Assessment Form (EAF) of the SEQR regulations.

RESPONSE: See response to III, C, 3.

3. COMMENT: The second sentence of the proposed Section 617.9(c)(iii) amendment to SEQR, pertaining to the required finding on a state agency action in an area with an approved local program -- should be dropped and, instead, put in the Department of State's Part 600 regulations.

RESPONSE: In an effort to minimize the procedural requirements upon state agencies, consistency determinations on actions necessitating the preparation of an EIS were incorporated into the existing findings requirements of Section 617.9. The suggested revision to this section would require agencies to follow two different processes, thereby complicating rather than facilitating the agency's efforts to comply with the provisions of Article 42 and the SEQR law.

4. COMMENT: The SEQR "Type I" list should be expanded to include identified coastal resources.

RESPONSE: See response to III, C, 4

E. Frances Hodson, Long Beach, New York

1. COMMENT: Section 8-0103 of the Environmental Conservation Law was omitted in Volume 2.

RESPONSE: This section is not directly related to the implementation of the program. It has been reprinted as an addendum to this volume.

2. COMMENT: The approval of water supply applications, particularly wells drawing large amounts of water, require public notice.

RESPONSE: No response necessary.

3. COMMENT: Local governments should be required to adhere to the coastal policies.

RESPONSE: Local government involvement in the State's coastal program is voluntary. Therefore these units are not required by the Waterfront Revitalization and Coastal Resources Act to adhere to the coastal policies, unless a community has an approved waterfront revitalization program. Many activities involve various state programs. State agencies in implementing those programs must of course be consistent with the coastal policies.

4. COMMENT: The State's enabling laws mandate that local zoning regulations be adopted in accordance with a "comprehensive" plan.

RESPONSE: It is agreed that such regulations be in line with an overall plan; however, the enabling laws do not require localities to adopt zoning regulations.

5. COMMENT: U.S. Army Corps of Engineers report of Long Beach was not included in the report.

RESPONSE: A number of Corps documents were consulted in the preparation of this draft EIS. Not all of them were cited.

6. COMMENT: No reference is made to the impact of salt water intrusion upon Long Island's groundwater.

RESPONSE: This subject is discussed in Part II, Section 5 under water resources. Policy 38 also addresses groundwater supplies, particularly those designated as primary source aquifers.

7. COMMENT: Dune protection and dune creation programs are not mentioned

RESPONSE: The protection of landforms such as beaches, barrier islands and dunes are discussed on pages 111-20 to 21 in Part III of the draft EIS. Also, artificial nourishment activities such as rebuilding or creating beaches and dunes are covered on the above cited pages.

8. COMMENT: Valuable materials produced by the Corps of Engineers and the U.S. Department of Commerce relating to hurricanes, ocean storms, protection of the barrier beach were not used in the draft EIS.

RESPONSE: A number of documents prepared by regional, State, Federal and international agencies were consulted and cited in Part II, Section 5 under flood and erosion hazards, in reference to hurricanes, storms and barrier beaches.

9. COMMENT: No mention is made of the rising sea level.

RESPONSE: This subject is covered on page 11-5-11.

10. COMMENT: The draft EIS must be distributed to the public for review and recommendation. It should not be rushed through the public review process

RESPONSE: Copies of the draft EIS were made available to the chief elected officials of all coastal cities, town, villages and counties, as well as other organizations, businesses and individuals prior to the scheduled public hearings. The review period for the draft EIS was for a period of 45 days.

11. COMMENT: There should be greater discussion of zoning and its effect upon civil rights.

RESPONSE: The State's Coastal Program does not rely upon zoning for implementation purposes.

12. COMMENT: The Department of Environmental Conservation may be better suited to protect the health and safety of the State's residents than the Department of State which is "more suited to the needs of developers".

RESPONSE: Specific responsibility for the State's coastal program was vested in the Department of State by the State Legislature. The Department's on-going planning and local government responsibilities were a major factor in this decision. The State's coastal program is more than an environmental protection program, for it advocates the beneficial use as well as the protection of the State's coastal resources. The Department of Environmental Conservation will still have a major role to play in the coastal program, because it has jurisdiction over a number of resources protection programs such as wetlands, water and air quality and habitats.

Aurora Gareiss, representing:

Udalls Cove Preservation Committee, Citizens Advisory Committee
Governing Board on Water Resources
(Written Testimony Submitted)

1. COMMENT: The approval of New York City's waterfront revitalization program is supported, provided: the program is undertaken with or without Federal funding; the City's work program be developed with public participation; and, the work program include the designation of several special management areas and special staffing to enforce development regulations on the waterfront.

RESPONSE: Support for Program approval appreciated. The City's participation in the State's Program is dependent upon a determination by the City Planning Commission that adequate implementation funds are available. The Commission's decision will be made when funding levels are established.

2. COMMENT: The concept of the watershed would assist in determining the landward limit of the coastal area.

RESPONSE: This concept was considered very early in the development stages of the State's coastal program. It was determined then that this concept was not uniformly practical, since its application would result in a coastal area extending in some places hundreds of miles inland. All of the uses in this vast area do not and would not have a direct and significant impact on coastal waters.

G. Mark Wainstock, representing:

Neighborhood Organizations and Citizens Outraged Against Lignite (NO COAL)
(Written Testimony Submitted)

1. COMMENT: "Coalport - Staten Island" is a coal export terminal proposed to be built by 1986. If implemented, NO COAL believes the project will ruin the Island's North Shore, destroy an existing tidal wetland and counter New York State efforts to develop and implement a rational and workable Coastal Management Program. As a result of the project, the Stapleton/Clifton waterfront would cease to be scenic, have its historic character destroyed, cultural vitality sapped, investment in, and reuse of existing building stock dry up, and thwart efforts to apply local aesthetic conditions in the design of new structures. Each of these potential results is apparently contrary to the considerations of Section 914.5 [915.5] of the Waterfront Revitalization and Coastal Resources Act.

RESPONSE: In addition to the LGWRP considerations mentioned above, a LGWRP must also, among other items, facilitate appropriate industrial uses requiring a waterfront location. Both the protection and preservation of resources and the provision for their beneficial use must be balanced and incorporated within a LGWRP. The Coalport - Staten Island project, should it be implemented, may or may not result in the effects described. However, once the New York State Coastal Management Program and the New York City Waterfront Revitalization Program are approved, the provisions of those programs will apply to all such activities in the defined coastal area.

2. COMMENT: NO COAL believes that there is pressure to "grandfather" New York City actions conducted to date from the application of future legislation, regulations, and guidelines emanating from Federal approval of the FEIS and Coastal Management Program. New York City should be made to adhere strictly to the final Coastal Management Program.

RESPONSE: In New York City, several types of actions which have complied with all SEQR requirements will not be subject to review under the City's WRP. These include: public improvements to be constructed pursuant to the official City map and official drainage plans; a site selection, urban renewal plan or large scale development plan adopted prior to the effective date of the WRP; and any action which has been certified under ULURP prior to the effective date of the WRP. Any major modifications to the above types of actions will, however, be subject to review under the City's WRP.

3. COMMENT: Is the Port Authority, as a bi-state agency, subject to NYS Laws enacted in response to the Federally-mandated Coastal Zone Management Act?

RESPONSE: The Port Authority of New York and New Jersey is a state agency and as such required to adhere to the WRCRA. It should be pointed out that the Coastal Zone Management Act is an Act which encourages, not mandates states to participate. (Also see response to Section II, C.1.).

COMMENT: Add a fifth sub-paragraph to NYCRR, Title 19, Part 601.4(a) to read: "(5) in New York City, community boards of affected littoral areas and relevant borough-wide civic/community organizations.", or as an alternative and possibly in lieu of that change, the following could be inserted within the review procedure for LGWRP in Section 601.4: "The Secretary of State will give public notice and schedule public hearing(s) at affected site(s) no later than 30 days following LGWRP submission by the locality."

RESPONSE: Local discussions should all have occurred by the time the local legislative body (in NYC, the Board of Estimates) votes to approve and submit the local program to the Secretary. Section 915(3) of Article 42 strongly encourages consultation with community based groups and others during program preparation. This has been adequately documented in the case of NYC.

5. COMMENT: Delete the words "if necessary" within NYCRR, Title 19, Part 601.3.

RESPONSE: We agree. The phrase has been deleted

6. COMMENT: Add to NYCRR, Title 19, Part 601.7: "Withdrawal of approved LGWRP by locality will rescind further state funding and other assistance, if such funding or assistance is being provided, for local government's LGWRP planning. Benefits under Article 42 of the Executive Law will cease as of the date of withdrawal."

RESPONSE: We agree. See revisions to Section 601.7.

H. Sister Francis Gerard Kress, CSJ, representing:

Environmental Protection Committee of Community Board No. 1 in Brooklyn,
and Greenport Civic Council
(Written Testimony Submitted)

1. COMMENT: Greenpoint and Williamsburg residents feel neglected since no public access to the waterfront exists in those areas.

RESPONSE: The NYS Coastal Management Program and the NYC Waterfront Revitalization Program contain provisions for the preservation and protection of existing access to the coast and provisions for increasing public access. Refer to the discussion of the provisions found under Policies 19 and 20 of both programs. Upon approval of the NYS Coastal Management Program, the shorefront access and protection requirements outlined in Part II, Section 7 of the Program document will be applied.

2. COMMENT: With or without financial support of the NYC Waterfront Revitalization Program, many things can still be done including public participation by those living and working in a particular area, and establishing a city wide advisory committee.

RESPONSE: No response necessary.

- 3 COMMENT: Specific areas of the Brooklyn waterfront should be evaluated and designated as wetlands and/or as areas to be protected.

RESPONSE: NYS's Tidal and Freshwater Wetlands Act and Protection of Water Laws Act are the primary means of protecting wetlands. A discussion of how these Acts are used to implement the wetlands policy can be found after Policy 44 in the NYS and NYC program documents.

- 4 COMMENT: NYS should have a comprehensive plan for monitoring and managing the New York Harbor and Bight.

RESPONSE: After approval of the NYS Coastal Management Program, New York State intends to work with affected agencies and interests to develop agreements with such agencies in order to seek methods for more comprehensive management of the Harbor.

5. COMMENT: Various NYC agencies should have been involved in the preparation of the Program and should be involved in its implementation in cooperation with NYC Community Boards.

RESPONSE: During the six years utilized by the NYC Planning Commission to prepare the NYC Waterfront Revitalization Program, all affected City agencies were consulted. They provided significant information and comments used in shaping the program. As a result of the consistency provisions of the NYS and NYC programs, all affected agencies must adhere to the program. Further, NYS and NYC fully intend to involve appropriate agencies in specific activities during program implementation.

I Virginia M. Dent, representing:

N.Y.S. Northeastern Queens Nature and Historical Preserve Commission
(Written Testimony Submitted)

- 1 COMMENT: The purposes of the Commission, the Federal Coastal Zone Management Act and the State's Waterfront Revitalization and Coastal Resources Act were outlined to demonstrate the mutual concerns of each. Also, the Commission expressed its intent to cooperate with the Department of State in the implementation of the State's coastal program.

RESPONSE: No reply necessary.

2. COMMENT: Despite Article 42 of the Executive Law, New York State must devise and legislate an implementation program. Local governments can help the Department of State in performing this task.

RESPONSE: This document is a description of the implementation program for the Coastal Management Program. Local governments can aid the Department in carrying out the program, if they choose to participate. Their efforts will add greater specificity to the State's Coastal Program.

3. COMMENT: Specific activities and projects sponsored by the Commission were identified. Several are being undertaken in cooperation with the City of New York, including a reuse plan for Fort Totten which has been declared surplus by the Federal government.

RESPONSE: No reply necessary.

4. COMMENT: The Commission's program -- consisting of the identified activities and projects -- should be included in the final EIS on the State's Coastal Management Program. The Commission views this program comparable to the City's waterfront program which is included in the draft EIS.

RESPONSE: Article 42 of the Executive Law requires State agencies' programs to be conducted consistent with coastal policies, not incorporated into the program document.

J. Bea Green, New York, New York

1. COMMENT: There are access problems associated with Gateway National Recreation Area and Broad Channel which should be addressed by the NYC WRP. Various public agencies often work at cross-purposes with one another, leading to piece-meal planning.

RESPONSE: Public access to the shorefront is one of the major concerns of the NYS CMP and the NYC WRP. A shorefront access planning process is included in the CMP which will result in a list of specific access improvements to which the State will give priority, within financial and legal limits. The NYC WRP designates several shorefront areas as appropriate for improved access, including those Gateway areas with no access.

One purpose of the NYS CMP is to coordinate plans and projects of various agencies for the coastal areas to ensure that State and local coastal policies are being followed, thus preventing actions occurring at cross purposes.

K. Sarah Chasis, representing:

Natural Resources Defense Council

(Comments presented after public hearing in New York City were contained in written comments submitted on July 26, 1982. The following comments are from those written comments.)

- 1 COMMENT: It is a significant achievement that the State has finally developed a comprehensive management program for its coast. Many years of effort went into this program.

RESPONSE: No response necessary.

- 2 COMMENT: The relationship between the program document and the regulations is unclear. Nowhere do the regulations that bind the state agencies to the coastal policies refer to the program document itself. As a consequence, the legal effect of the policy explanations and guidelines is unclear.

RESPONSE: We agree that the relationship between the regulations and the program document was unclear. The regulations have been amended to clarify and explain that relationship by stating: In evaluating proposed actions against the following policies, explanations and guidelines contained in the approved Coastal Management Program document...".

3. COMMENT: There are no policy guidelines for some of the most important policies, such as the protection of significant fish and wildlife, habitats

RESPONSE: See revisions which incorporate detailed policy guidelines. Also, see Response to Section I,B,3.

- 4 COMMENT: State permitting decisions are governed by the coastal policies only if the proposed action is deemed significant under SEQR. Since only a small portion of state permitting actions meet this test, the vast majority of activities permitted by the state will go unregulated under the program. To remedy this deficiency, NRDC recommends that if any answer to Part (e) of the Coastal Assessment Form (p. 626) is answered "yes" the action automatically should be deemed significant for purposes of SEQR. This would ensure that actions having a significant impact on the coast and the coastal policies conform to the coastal policies.

RESPONSE: Refer to the Response to Comment III. C. 6. In addition, it must be pointed out that the CAF is designed and intended for use as a coastal impact assessment tool for state agencies, similar to the use of the EAF for environmental impact assessment in DEC's Part 617. No single response to any inquiry on either form is a form indication of the existence of significant impacts or the lack thereof. However, once a state agency act on is in fact determined by that agency, after completion of the CAF, to have the potential to impact on the environment, then the proposed amendments to Part 617 to insure that the action -- including a permit action -- will be consistent with the DOS Part 600, Section 600.5 coastal policies.

5. COMMENT: No mechanism or guidelines are provided for resolution of conflicts between and among the coastal policies. Many of the development policies are too broad sweeping and unbalanced. For instance they fail to acknowledge that preservation of natural resources may be preferable to development in certain areas.

RESPONSE: Refer to the Response to Comment III. C. 19

6. COMMENT: The guidelines must reflect a recognition that certain water-dependent uses and facilities may be inappropriate for certain locations because of their adverse environmental impacts.

RESPONSE: Refer to those guidelines for additional clarifications.

7. COMMENT: Policy 3 guidelines are totally unacceptable. They, in essence, approve in advance major port expansions. They provide for an override of other coastal policies.

RESPONSE: This policy is limited as all policies are limited, by the requirement that an action must be consistent with all applicable coastal policies. Language has been added to clarify this requirement. See revisions.

8. COMMENT: Policy 3, Port Activity is nowhere limited to water dependent port activity

RESPONSE: Guideline 1 states that "in assessing proposed projects within or abutting a major port, the overriding consideration is the maintenance and enhancement of port activity which will have precedence over non port related activities". The intention of this guideline is that port related water-dependent activities have precedence over non water dependent activities. The guideline will be revised to more clearly state that within port areas port related activities, i.e., land use or development essential to waterborne transportation, should take precedence over development that is not related to waterborne transportation.

9. COMMENT: Why should all port dredging be deemed of statewide or regional benefit upon such a meager showing as need and acceptable environmental impacts. Guideline 5, dealing with landfill, should be struck.

RESPONSE: Neither guideline is as sweeping as the comment suggests. They will, however, be modified to make clear that acceptable environmental impacts are only those that would be permitted under all applicable environmental regulations.

10. COMMENT: Guideline 5 under Policy 3 seems overreaching

RESPONSE: The guideline is not overreaching. However, revisions have been made to clarify the guideline

11. COMMENT: Why is Policy 5 limited to large scale development only?

RESPONSE: The policy is not limited to large scale development. However, the explanation refers to large scale development as an example to explain the meaning of the policy statement.

12. COMMENT: Guideline 1, Policy 5 would seem to define all cities, built up suburban towns and villages, and rural villages as areas of unconcentrated development having adequate infrastructure and public services.

RESPONSE: Guideline 1 does not define these areas in this way, but as areas of concentrated development which generally have adequate infrastructure and public services. The adequacy of an area's infrastructure and public services must still be assessed against the needs of the proposed development activity to determine whether this policy is being furthered by the action.

13. COMMENT: All water dependent uses should not be excepted from this policy.

RESPONSE: Agree, the text is to be revised to except only water dependent uses with specific site requirements not compatible with this policy.

14. COMMENT: All second home development should not be excepted from the policy on encouraging concentration of development.

RESPONSE: Second home development should be excepted from this policy. However, second home development is not excepted from any other coastal policy. Any development, including second home must be carefully sited so as to maximize the benefits of maintaining open space and public access and be consistent with coastal policies.

15. COMMENT: Policy 22 should require that the recreation provided be open to the public

RESPONSE: The State does not have the authority to require that all private recreational development be opened to the public. Facilities using public funds will be opened for public access.

16. COMMENT: Many of the types of development listed in Policy 22 should not be sited right on the coast.

RESPONSE: The policy refers to both existing as well as new development, while many of these uses should not, or need not, have been located on the coast, they are there, and it is the intent of this policy that, if practicable, they should provide for water related recreation as a multiple use.

17. COMMENT: Steam electric generating stations and transmission facilities are exempt completely from the coastal policies.

RESPONSE: Actions subject to Article VII and VIII of the PSL are exempt from SEQR and thus from the procedures implementing Article 42. However, the level of environmental protection afforded under Article VII and VIII is equal to that of the coastal policies. In addition, the Secretary of State is a party to both proceedings and will present testimony on a facility's need for a shorefront location and its impacts on all coastal policies. Her/his testimony must be considered by the Board or PSC in reaching its decisions.

18. COMMENT: The explanation of Policy 28 is inadequate. To remedy this, NRDC recommends that the phrase "...if the proposed action is to be implemented. be deleted.

RESPONSE: It is unnecessary to delete that phrase, since it would be unnecessary to avoid or mitigate adverse effects if the action was not implemented.

19. COMMENT: The OCS Policy (NO. 29) has no specific guidelines accompanying it thus providing totally inadequate guidance for OCS activities.

RESPONSE: The discussion on oil and gas energy development planning processes has been expanded in the energy facility planning process section of this document. All activities including OCS must be consistent with the applicable policies.

20. COMMENT: The policy explanation for Policy 35 undercuts the natural resource protection intent of that Policy.

RESPONSE: The explanation of Policy 35 has been revised so it more accurately states the meaning of that policy.

21. COMMENT: Many of the important environmental policies (e.g., Nos. 7, 11-17, 24, 26) do not become effective until the state has either identified and mapped significant fish and wildlife habitat, scenic resources, and important farmlands or identified coastal erosion hazard areas. We could find no statement or commitment to a schedule for implementation of these tasks in the program. This is a major omission.

RESPONSE: Upon receipt of Federal funds pursuant to Section 306 of the CZMA, the State will complete these tasks during the first year grant period. See Section 10, Part 2 for more detail.

22. COMMENT: Policy 7 is weak in that it only applies to a range of habitats which is narrowly defined by the criteria listed for determining significance. These criteria are more stringent than in earlier drafts. Specific guidelines are needed governing uses affecting these areas of significance. A policy should be adopted to protect coastal fish and wildlife habitats not rising to the level of significance set in Policy 7.

RESPONSE: Until the signing into law of Article 42, New York had no law which directly focused on the preservation of fish and wildlife habitats. The protection of several habitats, however, were being provided for indirectly by existing resource protection laws such as the Tidal and Freshwater Wetlands Act and the Protection of Waters Act. The intent of Article 42 was to begin to meet this need by affording special protection to the particularly important or significant habitats. The criteria for determining which habitats are of statewide significance have not been made more stringent than as presented in earlier drafts. The criteria "are essential to the survival of...population" and "are found at a very low frequency within a coastal region" are the same as in the March 1979 draft CMP. A comprehensive policy protecting fish and wildlife habitats not rising to the level of significance set in Policy 7 was not adopted because such a policy would not have been enforceable under existing state law.

- 23 COMMENT: Specific guidelines should accompany Policy 9 and 10 in order to assure that sound resource management considerations are developed and adhered to.

RESPONSE: The NYS Department of Environmental Conservation is authorized under various sections of Environmental Conservation Law (see "State Means for Implementing the Policy" under respective policies) to regulate the utilization of the State's fish and wildlife resources. Sound resource management considerations such as the biology of the species, carrying capacity of the habitat, and public demands, provide the basis for DEC's decision on harvest restrictions, stocking programs and habitat improvement efforts. Any public or private initiatives to expand recreational or commercial use of the State's fish and wildlife resources can only be done with DEC's approval, thereby assuring that such initiatives will be done within the context of sound resource management considerations.

Additional guidelines for implementing policies 9 and 10, however, have been added to the policy explanations. Such guidelines will reinforce DEC's regulatory efforts to manage these resources.

- 24 COMMENT: The standards and evidence set forth in the regulations should be referenced in Policies 11 through 17.

RESPONSE: It is sufficient to cite the authorizing legislation.

25. COMMENT: The last sentence of the Policy 15 explanation should be struck since there is no basis in the policy for such a statement.

RESPONSE: The cited sentence is essential to clarify that further off-shore mining may be an alternative to land mining.

26. COMMENT: Policy 26 should not be limited to only public actions affecting important agricultural lands. The policy by its terms is much broader and the program would not be achieving the intent of the statute if it limited the policy's applicability so narrowly.

RESPONSE: Article 42 requires State agency actions to be consistent with the coastal policies. In terms of its applicability, Policy 26 is not limited any more than any other policy.

COMMENT: Policies 31 and 42 should acknowledge the provision of Section 307 which states that nothing in a State's coastal program shall in any way lessen or impair standards set pursuant to the Clean Air and Water Acts.

RESPONSE: The explanations of policies 31 and 44 have been amended accordingly.

COMMENT: NRDC adopts the NYS Coastal Coalition comments on the SEQR and DOS regulations, wishing to emphasize the following:

- . The caveat set forth in Sections 919(1) and 915(8) of the statute should be reflected in Section 617.9(c)(3) of the SEQR.

RESPONSE: Refer to the Response to Comment III. C. 5.

The exception for rulemaking made in the DOS regulations in Section 600.4(2) must be eliminated in order to conform to the statute.

RESPONSE: Refer to the Response to Comment III. C. 9.

- . The term "if necessary" should be deleted from the third to the last line of DOS regulations, Section 601.3.

RESPONSE: Refer to the Response to Comment III. G. 5.

"May" should be replaced with "shall" in the first line of Section 601.6(b).

RESPONSE: We agree. Refer to Revisions.

COMMENT: Because the coastal erosion hazard area regulations do not go into effect until those areas have been identified by DEC, it is essential that a schedule for rapid implementation of this program and designation of these areas be included as part of the coastal program.

RESPONSE: Refer to the Response to Comment III, C. 14.

COMMENT: Section 505.5(e) fails to follow Section 34-0109(b) of the statute in discussing the applicability of SEQR.

RESPONSE: It is the opinion of the Department of Environmental Conservation that Section 34-0109(b) is not consistent with Article 8 (SEQRA) which is intended to ensure that actions which do have a significant effect on the environment are adequately reviewed prior to approval. There are situations under Article 34 where many regulated activities should it which could not reasonably be construed that they may have a significant effect on the environment. The statutory conflict between the two Articles will require subsequent resolution, and it is felt appropriate not to complicate further the situation by inserting additional matter in the regulations at this time.

31. COMMENT: New non-movable structures and major additions to existing structures should not be allowed in structural hazard areas except perhaps where structural protection already exists. To do otherwise is to encourage the building of new erosion protection structures in lieu of a non-structural solution which is contrary to the findings and spirit of the law.

RESPONSE: The underlying authority for the regulations, "The Shoreowner's Protection Act", does not prohibit the siting of structures, movable or immovable, but sets standards for their location including consideration of the protection afforded by erosion protection structures. However, the prominent placement of Section 505.7(b), before the requirements for movable structures contained in Section 505.7(c) may create the impression of a preference for structural measures. To avoid this the order of the two sections is now reversed. See also CMP Policy 17 regarding the use of non-structural measures whenever possible.

32. COMMENT: Section 505.8(c)(7): this section should be changed to reflect the greater restrictions imposed on motorized vehicles in an earlier draft. Commercial fishing or emergency needs should be considered in permitting vehicular use of the beaches, but other uses should be prohibited.

RESPONSE: The latest draft continues the prohibition of vehicle use on primary dunes and bluffs but allows their operation on the more tolerant portion of beaches seaward of the upper debris lines and toes of primary dunes, thus assuring a virtually equal high level of protection while providing for reasonable use of a natural resource.

33. COMMENT: The limitations in primary dune development are excellent.

RESPONSE: No response required.

34. COMMENT: Section 505.9(e) must be revised to state: "The construction, modification, or restoration of erosion protection structures will not be permitted if such activity will result in (1) a measurable increase in erosion at the development site and other locations; or (2) adverse effects on natural protective features, existing erosion control structures or natural resources".

RESPONSE: Disagree: the section as drafted reflects the language and intent of Section 34-0108(3) except that the phrase, "significant fish and wildlife habitats" has been inserted in lieu of "fish spawning and shellfish beds" which is deleted.

L. Joseph Landau, representing:

Howard Golden, Brooklyn Borough President
(Written Testimony Submitted)

1. COMMENT: Supports the City's efforts in developing a local coastal program. The program submitted by the City is very comprehensive.

RESPONSE: Support appreciated. No reply necessary

2. COMMENT: One of two public concerns is to prevent unnecessary additions of bureaucratic red tape. The City's program submission accomplishes this with an implementation process within existing laws and procedures.

RESPONSE: No reply necessary.

3. COMMENT: Other concern is one of providing adequate financing to implement the local program. It is not clear in draft EIS whether or not the City will receive adequate funds to implement its program.

RESPONSE: At the time of responding to the comments contained in the hearings' testimony, the levels of funding to New York State and consequently New York City were unknown. An allocation for New York State of \$3 million has been discussed between Federal and state officials. Funding for New York State under Section 306 of the Coastal Zone Management Act requires Congressional appropriations.

4. COMMENT: There is no indication what elements or projects in the City's program will address the needs of Brooklyn's waterfront. Before the final EIS is issued, city and State officials should develop a work program and reach agreement on funding allocations.

RESPONSE: The Department of State has prepared a draft grant application covering the use of Federal funds over the next fiscal year. The process for allocating funds within the State is separate from the one governing the review and approval of New York State's coastal program.

M. Marilyn Vogel, representing:

NYC Citizens' Advisory Committee on Water Resources
(Written Testimony Submitted)

1. COMMENT: The NYC WRP should be adopted regardless of whether or not Federal funding is available.

RESPONSE: Adoption of the Program by NYC is an option whether or not Federal funds are available. However, the City's participation in the State's program will depend upon the availability and level of Federal and state implementation funds.

2. COMMENT: Public participation should be provided for in the implementation of the NYC WRP, including participation by the CAC WR. 4 5

RESPONSE: Proposals for program implementation will be solicited from and reviewed by the public through existing procedures. The public participation mechanism to be utilized in New York City will be the 59 existing Community Planning Boards.

3. COMMENT: The Jamaica Bay/Rockaways/tributaries area should be designated as an Area of Particular Waterfront Significance and a task force created to make recommendations for policies and projects; policies should be developed to address problems in the Arthur Kill, Newtown Creek, the Brooklyn Waterfront, and the Northshore of Queens.

RESPONSE: Your recommendation is noted. Specific projects and proposals such as yours for areas within the coastal boundary for New York City will be solicited through existing channels from the public after approval of the NYC WRP. (Refer also to Response, Section III, N. 1)

4. COMMENT: The program should contain guarantees of enforcement provisions, through staffing.

RESPONSE: Approval of the WRP may make funds available that could be used to ensure that adequate enforcement is provided. In fact, the City's WRP strongly recommends funds be used for this purpose.

Thornton Willett, representing:

Kane Street Block Association
(Written Testimony Submitted)

1. COMMENT: The Coastal Management Program offers "fuzzy" goals without mentioning their implementation or enforcement.

RESPONSE: The DEIS lists 44 specific coastal policies in Part II, Section 6. Under each policy are described existing State programs and activities which can be used to implement and enforce the policy. In addition, the consistency provision of the Waterfront Revitalization and Coastal Resources Act (Section 919(1) of Article 42 of the Executive Law) requires that actions directly undertaken by State agencies in the coastal area are to be consistent with coastal policies. Also, when New York's Coastal Management Program is approved, the actions of Federal agencies which impact the coastal area must be consistent with the approved program policies.

2. COMMENT: For numerous reasons cited, New York City's City Environmental Quality Review process (CEQR) does not work and thus is greatly responsible for the deficiencies of the Coastal Management Program.

RESPONSE: See last response below.

- 3 COMMENT: The consistency provisions of the Coastal Management Program do not allow for verification or enforcement of the consistency determinations

RESPONSE: Once the New York City Waterfront Revitalization Program is approved, all City agencies and actions must adhere to that program. To assure that the consistency provisions of LGWRPs are continually and uniformly enforced, the NYCRR, Title 19, Part 600 regulations have been changed to include provisions for monitoring of those programs during their implementation. See Section 600.

4. COMMENT: Several improvements could be made in the CEQR process which, in turn, would help the Coastal Management Program: (1) The Project Data Statement should include a cost benefit analysis; (2) The Project Data Statement should be sent to Community Boards and to appropriate City Departments; (3) The Department of City Planning's involvement in the process should be eliminated.

RESPONSE: CEQR is now under public review for a new Executive Order. Furthermore, CEQR will be one of the means used to implement the WRP. The existing procedure is adequate for program approval purposes; however, improvements could be incorporated into the program.

O. Agnes Hentschel, Woodside, New York

- 1 COMMENT: Desires extension of greenbelts and open space from Gateway National Recreation Area along the shoreline to western Queens and Long Island City in order to preserve recreation and scenic amenities from high rise development.

RESPONSE: Policy F in the NYC WRP emphasizes the priority to be given to the development of mapped parklands and appropriate open space where the opportunity exists to meet the recreational needs of immobile user groups and communities without adequate waterfront park space and/or facilities. The identification of specific areas for open space and implementation of projects will take place following WRP approval and will be subject to public solicitation and review.

P. Robert Alpern, representing:

NYC Citizens Advisory Committee on Water Resources

COMMENT: Regarding the NYS CMP, the CAC approves of the Program and makes these recommendations: (1) a statewide citizens advisory committee should be formed to oversee implementation of the CMP.

RESPONSE: A statewide advisory committee will be formed and support for it is included in a proposed first year work program.

2. COMMENT: Establishment of an areawide Citizens Advisory Committee should be a pre-condition for State approval of all local Waterfront Revitalization Programs.

RESPONSE: Article 42 strongly encourages local governments to consult with all affected agencies and community based groups during the preparation of a local waterfront revitalization program. The DOS guidelines for LWRP indicate the need for broad local support. Such support would necessitate extensive public involvement. The precise form of such involvement may vary with each locality.

3. COMMENT: Consideration should be given to establishing a new State CMP policy on monitoring and control of physical modifications to the shoreline to avoid adverse cumulative effects.

RESPONSE: While no specific policy addresses the concern reflected in the above comment, specific coastal features -- dunes, beaches, wetlands, etc. -- the modification of which are of particular concern, are controlled by specific policies and specific adverse effects of modification are addressed in policies on access, water quality, dredging etc. Also, as to monitoring, the DOS will receive descriptions of, and comments upon, all major actions in the coastal area.

4. COMMENT: Consideration should be given to establishing a New State CMP policy on comprehensive monitoring and management of New York Harbor and New York Bight.

RESPONSE: The proposed first year work program includes a task that will address the issue of comprehensive management of the New York Bight including attention to cooperation with New Jersey and federal agencies.

5. COMMENT: Expand NYS Office of Business Permits master application program to include Federal, substate, and interstate permits.

RESPONSE: Article 42 requires that the Office of Business Permits shall conduct continuing studies of means of expediting development called for in approved programs. During the first year work program, the DOS will be working closely with the Office of Business Permits to identify and implement means for streamlining permit procedures in the coastal area.

Q. Maurice Hinchey, representing:

Member of New York State Assembly
Chairman of Environmental Conservation Committee
New York State Assembly

1. COMMENT: Urges the approval of the NYS Coastal Zone Management Program. The Legislature has worked closely with the NYS Department of State, Department of Environmental Conservation and other involved agencies and passed the Waterfront Revitalization and Coastal Resources Act and the Shoreowners Protection

Act. The Legislature has been energetically working to fulfill the mandates of the Federal Coastal Zone Management Act in the establishment of a State plan. Without adequate Federal funding and approval of New York's Coastal Management Program, the prospects of prompt action consistent with the established federal program is considerably diminished.

RESPONSE: Thank you for your support.